Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Customs and Patent Appeals and the United States Court of International Trade

Vol. 16 FEBRUARY 10, 1982 No. 6

This issue contains

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

The abstracts, rulings, and notices which are issued weekly by the U.S. Customs Service are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Logistics Management Division, Washington, D.C. 20229, of any such errors in order that corrections may be made before the bound volumes are published.

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Price: $2.50 (single copy domestic); $3.15 (single copy foreign). Subscription price: $95.00 a year domestic; $118.75 a year foreign.

U.S. Customs Service
Treasury Decisions

(T.D. 82-24)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Argentina peso:	
December 28, 1981	$0.000138
December 29, 1981	.000102
Dec. 30, 1981–Dec. 31, 1981	.000094
Chile peso:	
Dec. 28, 1981–Dec. 31, 1981	$0.025575
Colombia peso:	
Dec. 28, 1981–Dec. 29, 1981	$0.016949
Dec. 30, 1981–Dec. 31, 1981	.016915
Greece drachma:	
Dec. 28, 1981–Dec. 31, 1981	$0.017271
Indonesia rupiah:	
Dec. 28, 1981–Dec. 30, 1981	$0.001582
December 31, 1981	.001563
Israel shekel:	
Dec. 28, 1981–Dec. 31, 1981	$0.063898
Peru sol:	
Dec. 28, 1981–Dec. 29, 1981	$0.002020
Dec. 30, 1981–Dec. 31, 1981	.001972

South Korea won:

December 28, 1981	$0.001436
December 29, 1981	.001428
Dec. 30, 1981–Dec. 31, 1981	.001427

(LIQ–01–03 O:C:E)

Dated: January 15, 1982.

KENNETH A. RICH,
Acting Chief,
Customs Information Exchange.

(T.D. 82–25)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 81–269 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Brazil cruziero:	
Dec. 28, 1981–Dec. 31, 1981	$0.008117
Hong Kong dollar:	
December 28, 1981	$0.176211
December 29, 1981	.175979
December 30, 1981	.175747
December 31, 1981	.175824
Japan yen:	
Dec. 30, 1981–Dec. 31, 1981	$0.004550
Netherlands guilder:	
December 31, 1981	$0.407332
Switzerland franc:	
December 28, 1981	$0.552792
December 29, 1981	.554017
December 30, 1981	.554324
December 31, 1981	.559284

(LIQ–03–01 O:C:E)

Dated: January 15, 1982.

KENNETH A. RICH,
Acting Chief,
Customs Information Exchange.

U.S. Customs Service

Customs Service Decisions

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C.

The following are decisions made by the United States Customs Service where the issues involved are of sufficient interest or importance to warrant publication in the CUSTOMS BULLETIN.

HARVEY B. FOX,
Director,
Office of Regulations.

(C.S.D. 82-21)

Subject: Entry: The Discovery of a Short Shipment of a Pallet Is Not Sufficient Grounds To Allow the Reliquidation of an Entry Pursuant to Section 520(c)(1), Tariff of 1930, as Amended

Date: April 29, 1981
File: ENT-1-01 CO:R:E:E
715316 M

This ruling concerns a request for reliquidation under section 520(c)(1), Tariff Act of 1930, as amended, due to a short shipment of a pallet.

Issue: Is the discovery of a short shipment of a pallet sufficient grounds for the reliquidation of an entry pursuant to section 520(c)(1), Tariff Act of 1930?

Facts: The carrier's manifest indicated that 45,000 jacks were laden on the carrier. The consumption entry summary filed on December 13, 1979, reflected the amount given on the manifest and duties were paid on that amount. However, it is contended that a whole pallet was not shipped at that time and that in fact only 41,600 jacks were laden on the carrier. The missing pallet containing the 3,400 jacks was subsequently imported and entered on December 21, 1979.

The consumption entry summary filed on December 13, 1979, for the 45,000 jacks was liquidated on January 4, 1980, "as entered." On

May 14, 1980, the importer filed a discrepancy report with Customs reflecting the short shipment of a pallet containing 3,400 jacks.

The District Director of Customs at the port involved denied the request because the discrepancy report on Customs Form 5931 was not timely filed.

Law and analysis: Section 4.12(a)(2) provides that shortages shall be reported to the district director by the carrier by endorsement on the importer's claim for shortage on Customs Form 5931 as provided for in section 158.3, Customs Regulations, or within 60 days after the date of entry of the vessel, whichever is later.

Section 158.3, Customs Regulations, in pertinent part, provides that allowance shall be made in the assessment of duties for lost or missing merchandise included in an entry summary whenever it is established to the satisfaction of the district director before liquidation of the entry summary becomes final that the merchandise claimed to be lost or missing was not "permitted."

In T.D. 78–199, we noted that there are two different types of shortages (unconcealed shortages and concealed shortages), which because of their difference necessitate different handling. An unconcealed shortage is where an entire package or a case is missing, whereas a concealed shortage is where there is a shortage of less than a package or case lot. Since an entire pallet was missing in this instance, this matter involves an unconcealed shortage.

It was noted in T.D. 78–199 that "Ordinarily, a shortage involving missing cases or packages will be apparent to both the carrier and the consignee at the time the goods are "permitted" and the procedures described in section 158.3 of the Regulations will be followed."

It was further noted in T.D. 78–199 that "On rare occasions, a consignee who failed to file CF 5931 or a protest before the liquidation became final might find that an unconcealed shortage involving the missing case or package was not brought to the attention of Customs before the entry was liquidated or the liquidation became final. In that case, if he can establish to the satisfaction of the district director that the failure to file a timely CF 5931 was due to an inadvertence or mistake of fact, within the meaning of section 520(c)(1), and if he calls the matter to the attention of Customs within the time limits of that provision, a reliquidation of the entry and the refund of duties would be appropriate."

In this case, no explanation was given as to why neither Customs Form 5931 nor a protest was filed during the protest period (within 90 days after the liquidation of the entry). Since the shortage involved is an unconcealed shortage and therefore, should have been apparent to the parties involved at the time the goods were "permitted," the

discovery of the shortage in and of itself is not considered a mistake of fact or inadvertence within the meaning of section 520(c)(1), Tariff Act of 1930, as amended.

Holding: The discovery of a short shipment of a pallet, without any further explanation as to the failure to file a CF 5931 or a protest during the protest period, is not sufficient grounds to allow the reliquidation of the entry pursuant to section 520(c)(1), Tariff Act of 1930, as amended.

(C.S.D. 82-22)

Classification: Jogging Shoe Produced in Korea

Date: July 13, 1981
File: CLA-2-7:S:C:D6:61-423
800950

In a letter dated June 30, 1981, you inquired as to the dutiable status of a jogging shoe produced in Korea.

The exterior surface of the upper is composed of four materials: A—a white, fabric backed vinyl which has been embossed to simulate leather; B—dyed split leather; C—a rubber overlap of the sole onto the toe area; and D—a thin, purple, plastic coating over a loosely knitted fabric scrim. The plastic coating of D is so thin that the weave of the fabric underneath can readily be seen. However, it is thick enough to be considered a plastic surface for these purposes. Therefore, A, C and D are all plastic surfaces. C, the split leather, is not, and it covers more than 10% but, apparently, less than 50% of the exterior surface area of the upper.

Thus, your sample is classifiable under the provision for footwear, which is over 50% by weight of rubber and plastic; in which leather covers less than 50% of the exterior surface area of the upper and rubber and plastic cover less than 90%; which is not protective against water, oil, grease, or cold or inclement weather; which has neither open toes nor open heels and is not of the slip-on type; which has soles (and midsoles) of rubber or plastic which are affixed to one another and to the upper exclusively with an adhesive and which do not overlap the upper other than at the toe; which does not have a foxing-like band applied or molded at the sole and overlapping the upper; and which is, we assume, valued for Customs purposes not over $6.50 per pair, in item 700.61, Tariff Schedules of the United States, and dutiable at the rate of 37.5%.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

(C.S.D. 82-23)

Classification: Footwear Produced in Czechoslovakia

Date: July 17, 1981
File: CLA-2-7:S:C:D6:61-402
800776

In a letter dated May 20, 1981, you inquired as to the dutiable status of five shoes produced in Czechoslovakia.

We will call your girls' leather "T-bar" Sample A; the canvas, "Tretorn" design upper tennis shoe Sample B; the split suede leather, U-throat jogger Sample C; the canvas with leather trim U-throat jogger Sample D; and the nylon with leather trim U-throat jogger Sample E. Samples A through D are of simultaneous injection construction using a rubber as the injected material. Sample E is of cement construction. According to the report of laboratory analysis, the leather in sample D covers 43.8% of the exterior surface area of the upper (ESAU) and that in Sample E covers 45% of the ESAU.

You stated in your telephone conversation with Import Specialist Sheridan that shipments of these styles will all take place on or after July 1, 1981.

Samples A and C are classifiable under the provision for footwear, which has over 50% leather surface on ESAU, in which the upper is not in chief value of fiber and the whole shoe is in chief value of leather, which is not commonly worn by men, boys or youths, and which is valued over $2.50 per pair, in item 700.45, Tariff Schedules of the United States, and dutiable at the rate of 20 percent.

Samples B and D are classifiable under the provision for footwear, which is over 50% weight of rubber and plastic; in which leather covers less than 50% of the exterior surface area of the upper and rubber and plastic cover less than 90%; which is not protective against water, oil, grease, or cold or inclement weather; which has neither open toes nor open heels and is not of the slip-on type; which does not have soles (and midsoles if any) affixed to the upper and to one another exclusively with an adhesive; and which is, we assume, valued for Customs purposes over $3.00 but not over $6.50 per pair, in item 700.67, Tariff Schedules of the United States, and dutiable at the rate of 66% plus $1.58. If valued under $3.00 per pair, each is classified in item 700.64, TSUS, dutiable at the rate of 84 percent.

Sample E is classifiable under the provision for footwear; which is over 50% by weight of rubber and plastic; in which leather covers less than 50% of the exterior surface area of the upper and rubber and plastic cover less than 90%; which is not protective against water, oil, grease, or cold or inclement weather; which has neither open toes

nor open heels and is not of the slip-on type; which has soles and midsoles of rubber or plastic which are affixed to one another and to the upper exclusively with an adhesive and which do not overlap the upper other than at the toe and heel; which does not have a foxing-like band applied or molded at the sole and overlapping the upper; and which is, we assume, valued for Customs purposes not over $6.50 per pair, in item 700.61, Tariff Schedules of the United States, and dutiable at the rate of 66 percent.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1 (a)(1)).

(C.S.D. 82-24)

Manipulation in Warehouse: The Conversion of Concentrated Orange Juice Into Orange Juice not Concentrated in a Class 8 Customs Bonded Warehouse

Date: August 7, 1981
File: CO:R:CD:D
213303 NK

Issue: Whether the conversion of concentrated orange juice into orange juice not concentrated by the addition of water in a Class 8 Customs bonded warehouse is a permissible manipulation or a manufacture prohibited under 19 U.S.C. 1562.

Facts: The District Director of Customs, Tampa, Florida, issued a permit on Customs Form 3499, permitting a Florida processor to convert, by the addition of water, imported concentrated orange juice for manufacturing (COJM) of approximately 65° Brix into orange juice not concentrated at 17.31° Brix in a Customs bonded warehouse which, if permissible as a manipulation under 19 U.S.C. 1562, would allow the processor to withdraw the orange juice for domestic consumption at the rate of 20 cents per gallon rather than at the rate of 35 cents per gallon applicable to concentrated orange juice for manufacturing.

The imported COJM in barrels is removed from storage, thawed, dumped into a hopper and transferred with the use of a pump into a surge container in the form of a refrigerated tank. When needed, the COJM is removed from the surge tank into an automatic blender which is essentially a blending pot. The blender has mounted on it, near the top, an automatic recording refractometer. This refractometer constantly monitors the effluent from the blender. A water line enters a tee under the blender at the same point the COJM enters. A servo valve is mounted in the water line that supplies the blender. An electronic signal from the automatic refractometer is fed to the servo

325-073 O - 82 - 2

mechanism on the water valve. The signal is adjusted so that the amount of water going into the blender is varied by the servo valve to maintain any predetermined Brix value of the effluent. In this case the desired Brix is 17.3°. The blender has agitator vanes driven by a relatively high horsepower motor to insure thorough mixing of the COJM and the water. The blended juice of 17.3° Brix passes out of the top of the blender through a flowmeter and is then withdrawn from the bonded warehouse for domestic consumption, dutiable at 20 cents per gallon.

After withdrawal for domestic consumption, the degree Brix of the orange juice will be further lowered to approximately 11.8° Brix by the addition of more water and essential oils. Also the juice would be heat-treated and packed for consumer use.

It is the position of the processor and others who wish to process in this manner that the conversion in the Customs bonded warehouse prior to withdrawal for domestic consumption is a manipulation permissible under 19 U.S.C. 1562.

It is the position of other interested parties that the conversion is a manufacture prohibited under 19 U.S.C. 1562. Legal briefs supporting both positions were submitted in the form of requests for a formal binding ruling under Part 177 of the Customs Regulations.

Applicable laws: In accordance with section 151.91 of the Customs Regulations, the average Brix value of unconcentrated natural orange juice in the trade and commerce of the United States is determined to be 11.8° Brix for purposes of the provisions for fruit juices, Subpart A, Part 12, Schedule 1, Tariff Schedules of the United States (TSUS). Concentrated orange juice is classifiable in item 165.35, TSUS, dutiable under the column 1 rates of duty at 35 cents per gallon. In applying the Headnotes to Subpart A, the number of gallons in a concentrate is determined on the basis of quantity of reconstituted juice at 11.8° Brix which can be obtained from the imported concentrate. Natural unconcentrated orange juice is classifiable in item 165.30, TSUS, dutiable under the column 1 rates of duty at 20 cents per gallon. However, the Headnotes also provide that a reconstituted juice having a degree of concentration of less than 1.5 (with some adjustments) shall be regarded as a natural unconcentrated juice. Thus, for tariff classification purposes, reconstituted orange juice (or orange juice from concentrate) which has a Brix value of 17.31° or less is also classifiable as unconcentrated orange juice in item 165.30, TSUS, dutiable at 20 cents per gallon. (Under the standards of identities for orange juice products of the Food and Drug Administration (FDA), 21 CFR Part 146, 20° Brix is the dividing line between concentrated and unconcentrated orange juice).

Section 1562, title 19, United States Code, and Part 19 of the Customs Regulations, permit the entry of merchandise without the payment of import duties into a Customs bonded warehouse for manipulation. Under Customs supervision the merchandise "may be cleaned, sorted, repacked, or otherwise changed in condition, but not manufactured." When such manipulated merchandise is withdrawn from the warehouse for domestic consumption it is subject to duty in its condition as withdrawn for consumption, even if the manipulation resulted in a lower rate of duty than would have been applicable had the merchandise, in its condition as imported for entry in the warehouse, been entered for domestic consumption.

The key legal issue is the meaning of the term "or otherwise changed in condition, but not manufactured" as used in section 1562, and as it first appeared in section 562 of the Tariff Act of 1922. The law does not define the term and apparently there is no legislative history defining the term. Further, the Courts have not been confronted with the issue.

Position To Support Manipulation

The proponents of the position that the conversion is a permissible manipulation theorize that section 1562 prohibits a manufacture but it does not prohibit a production. A production falls within the term "otherwise changed in condition but not manufactured." Under this theory "a product is manufactured under section 1562 when it crosses the line (which varies for every product) between unfinished merchandise and finished merchandise ready for its intended use." Thus, concentrated orange juice converted to orange juice not concentrated at 17.31° Brix is a production, one step toward its intended use as finished orange juice from concentrate because after withdrawal for consumption, the Brix will be further lowered to approximately 11.8° Brix by the addition of more water and essential oils. Also the juice would be heat-treated. The finished product would then be ready for packing for consumer use. Among the many cases cited to support this theory, three of them stand out. Two of the cases have been misinterpreted and the third is a tenuous position held to by the Customs Service.

1. C.S.D. 80–165, November 29, 1979, held that imported bulk beer reduced in alcoholic content by the addition of water was a "change in condition but not manufactured" under 19 U.S.C. 1562.

> Comment—The imported beer was not a concentrate and did not involve conversion of a concentrate to reconstituted beer. (27 CFR 245.235, defines concentrated and reconstituted beer.)

2. C.S.D. 80–162, November 27, 1979, held that the mere blending of water with concentrated orange juice for manufacturing of grade A quality to reduce the degree Brix of the concentrate is not a manufacture or production for drawback, 19 U.S.C. 1313.

Comment—The designated concentrated orange juice was still a concentrated orange juice and was not converted to orange juice not concentrated. The addition of water did not change its character or quality or use.

3. An internal Customs memorandum dated February 9, 1977, stated that "as a production, therefore, the stemming of tobacco would constitute a drawback operation, yet it would be permissible as a manipulation under section 1562 since the product is otherwise changed in condition but not manufactured." This statement supported a long standing position of the Customs Service that threshing of flue-cured leaf tobacco in a warehouse under 19 U.S.C. 1562, for ultimate use in the production of cigarettes was a change in condition but not a manufacture. In 1964, the Customs Service refused to change its position because it was not "clearly wrong."

Comment—The position of the Customs Service is more tenuous now in view of T.D. 80–132, dated May 15, 1980. This was a decision in a domestic manufacturer's petition which found that machine processed cigarette leaf tobacco was not "scrap" but was partially manufactured and held that it was classifiable as tobacco, manufactured or not manufactured, not specially provided for, in item 170.80, TSUS. The position of the Customs Service concerning the process of threshing tobacco in a warehouse is limited to the case which was the subject of the internal Customs memorandum.

Position To Support Manufacture

The proponents of the position that the conversion is a prohibited manufacture theorize that if the change in condition results in a new and different article of commerce with a new name, character, or use, that it constitutes a prohibited manufacture and that each process to produce a finished article may constitute a manufacture. They cite a long history of court interpretations of "manufacture or production" under the drawback law, 19 U.S.C. 1313, to support their position. The standards of identities of the Food and Drug Administration for concentrated orange juice for manufacturing (21 CFR 146.153) and for orange juice from concentrate or reconstituted juice (21 CFR 146.145) were cited. Under these standards of identities, the minimum requirements for orange juice from concentrate (21 CFR

146.145) are met by the conversion of the imported concentrate in the warehouse prior to withdrawal for consumption. Thus, under this theory the conversion results in a product having a different name, character and/or use and constitutes a manufacture prohibited under section 1562.

Comment—The additional processes described after the withdrawal for consumption are optional processes under 21 CFR 146.145.

Definition of Manufacture vs. Production

Neither side has adequately defined the difference between the terms "manufacture" and "production." The attempts of the Customs Service have not been definitive. The courts have avoided it and recognized "the difficulty, if not the impossibility, of laying down an abstract rule differentiating between 'manufacture' and 'produced' as those terms are used in the drawback statute." See *United States v. International Paint Co., Inc.* 35 C.C.P.A. 87, 92 (1948). If the process in question constitutes a manufacture, a discussion concerning production is not necessary in rendering a decision under 19 U.S.C. 1562.

Definition of Manufacture

Tide Water Oil Company v. United States, 171 U.S. 210, decided by the United States Supreme Court on May 31, 1898, concerned a drawback law which did not contain the term "production." The Rev. Stat., paragraph 3019 provided for drawback on articles "wholly manufactured of materials imported, on which duties have been paid when exported." The Court held that box shooks manufactured in Canada and imported for assembly with nails manufactured in the United States were not *wholly* manufactured in the United States with the use of imported materials. The Court implied that if "wholly" was not included in the statutory requirement, the process constituted a manufacture. The Court then went on to define the term "manufacture" as follows:

> The primary meaning of the word "manufacture" is something made by hand, as distinguished from a natural growth; but as machinery has largely supplanted this primitive method, the word is now ordinarily used to denote an article upon the material of which labor has been expended to make the finished product. Ordinarily, the article so manufactured takes a different form, or at least subserves a different purpose from the original materials; and usually it is given a different name. Raw materials may be and are often subjected to successive processes of manufacture, each one of which is complete in itself, but several of which may be required to make the final product. Thus, logs are first manu-

> factured into boards, planks, joists, scantlings, etc., and then by entirely different processes are fashioned into boxes, furniture, doors, window sashes, trimmings and the thousand and one articles manufactured wholly or in part of wood. The steel spring of a watch is made ultimately from iron ore, but by a large number of processes or transformations, each successive step in which is a distinct process of manufacture, and for which the article so manufactured receives a different name.
>
> The material of which each manufacture is formed, and to which reference is made in section 3019, is not necessarily the original raw material—in this case the tree or log—but the product of a prior manufacture; the finished product of one manufacture thus becoming the material of the next in rank. This case, then, resolves itself into the question whether the materials out of which these boxes were constructed were the boards which were manufactured in Canada or the shooks which were imported into the United States.

Section 30 of the Tariff Act of 1897, did not contain the word "wholly" and allowed drawback "where imported materials on which duties have been paid, are used in the manufacture of articles manufactured or produced in the United States." Under this change in the drawback law, the Supreme Court would have reached a different conclusion in the *Tide Water Oil Company* case in applying its definition of manufacture.

Although *Allen v. Smith* 173 U.S. 389 (1899) did not concern the drawback law, the Supreme Court cited with approval the *Tide Water Oil Company* case and the definition of the term "manufacture." The Courts have continued to use the definition in other related Customs laws.

Midwood Industries, Inc., v. United States, 64 Cust. Ct. 499 (1970), concerned 19 U.S.C. 1304 relating to markings of country of origin on imported merchandise. On page 507 the United States Customs Court stated:

> We are of the opinion that the processes to which the imported articles are subjected in plaintiff's Tube Line plant, namely, the cutting, boring, facing, threading, bevelling, and heating and compressing, are manufacturing processes, irrespective of how performed, and albeit that these processes are representative of a successive stage of manufacture. *Tide Water Oil Company v. United States*, 171 U.S. 210.
>
> We are also of the opinion that the end result of the manufacturing processes to which the imported articles are subjected in plaintiff's Tube Line plant is the transformation of such imported articles into different articles having a new name, character and use.

Valentina, Ltd. v. United States, 65 Cust. Ct. 19 (1970), concerned a classification issue under the tariff laws. On page 21, the court stated:

> In short, when the plastic material was manufactured into spangles, it was then known in trade and commerce not as plastic

but rather as spangles. In this connection, the principle is basic that once a material is so manufactured or processed that it becomes something else that is recognized in the trade and given a specific tariff status by name, the article for tariff purposes is no longer the material that it was prior to manufacture or processing. See *e.g., Tide Water Oil Company v. United States*, 171 U.S. 210 (1898).

The definition of the term "manufacture" as defined in the *Tide Water Oil Company* decision has been continuously cited by the Courts with approval under the Customs laws and the definition is also sufficient for purposes of 19 U.S.C. 1562. It is presumed that Congress was aware of the definition by the Courts when expressly prohibiting manufacture in a manipulation warehouse in the Tariff Act of 1922. We conclude that a change in condition which results in a "manufacture" as that term is defined by the Courts is expressly prohibited under 19 U.S.C. 1562.

Law and analysis: The standards of identities of the FDA for concentrated orange juice for manufacturing (21 CFR 146.153) and orange juice from concentrate or reconstituted orange juice (21 CFR 146.145), define two different orange juice products. These two definitions are cited by reference in the regulations of the United States Department of Agriculture (USDA) in setting forth standards of grades for these products (7 CFR 2852.5681 and 2852.2221). The Official Rules Affecting the Florida Citrus Industry, in turn, cite the USDA standards which incorporate by reference the FDA definitions for these products. (Chapters 20–64.08 and 15).

The Florida Citrus Commission, State of Florida Department of Citrus, and associations of processors, growers, and packers representing a cross section of the citrus industry have submitted views that the conversion of concentrated orange juice to orange juice not concentrated by addition of water results in a new and different article of commerce.

The Codex Alimentarius Commission also has established international standards for these products similar to the standards of identities of the FDA.

The Citrus Associates of the New York Cotton Exchange, Inc., in its rules governing contracts for future delivery of concentrated orange juice for manufacturing also cite the USDA standard, which in turn incorporates the FDA standard of identity. The conversion in the warehouse of the imported concentrated orange juice for manufacturing into orange juice not concentrated renders the product not acceptable for delivery to the futures market.

The conversion in the warehouse also results in a change in tariff classification. The Headnotes to Subpart A, Part 12, Schedule 1, TSUS, define the term "reconstituted" orange juice.

A taste test by a Customs laboratory on June 2, 1981, indicated that similar concentrated orange juice for manufacturing converted to 17.3° Brix by the addition of water is a palatable product. Three of the ten panelists indicated that they would prefer to buy the product at 17.3° Brix over juice at 12.1° or 11.8° Brix.

The process of the housewife who takes a finished manufactured can of frozen concentrated orange juice and follows simple directions to mix the concentrate with three cans of water and to stir it or shake it briskly is compared with the process of conversion in the warehouse. But, the housewife need not employ laboratory and quality control technicians, engineers and laborers, or invest in processing plants, equipment, and machinery such as refrigerated surge tanks, giant blenders, and refractometers, nor does she need to comply with the many laws, rules, and regulations governing these products. The manufacturer or processor has done it all for her.

After a review of all the submitted information, we are satisfied that the conversion as described results in a manufacture prohibited under 19 U.S.C. 1562.

Holding: The conversion of concentrated orange juice for manufacturing into orange juice not concentrated by the addition of water is a manufacture for purposes of 19 U.S.C. 1562 and is not a permissible manipulation.

(C.S.D. 82-25)

Subject: Warehousing: Cutting and Rewinding Rolls Into Smaller Rolls Inside a Bonded Warehouse Constitutes a Manufacturing Process and not a Permissible Manipulation Under 19 U.S.C. 1562

Date: August 12, 1981
File: WAR-3-CO:R:CD:D
212574 SMC

Issue: Whether the cutting and rewinding of jumbo rolls of capacitor tissue paper into rolls of smaller widths according to customers' specifications constitutes a manipulation within the meaning of section 562, Tariff Act of 1930, as amended (19 U.S.C. 1562).

Facts: Forty inch wide rolls of capacitor tissue paper are imported wound onto cardboard cones. These jumbo rolls are placed onto slitting machines which unwind and slit the paper into smaller widths according to customers' specifications. The paper is then rewound onto smaller width cones. After the smaller width rolls or bobbins are removed from the slitting machine, they are separated, sorted, sampled for thickness, identified, packaged into polyethylene bags, and finally crated for shipment to customers.

Law and analysis: Title 19, United States Code, section 1562, provides that merchandise may be cleaned, sorted, repacked, or otherwise changed in condition, but *not manufactured*, in a bonded warehouse established for that purpose, and be withdrawn therefrom for exportation without the payment of duties, or for consumption, upon payment of the duties accruing thereon, in its condition and quantity, and at its weight, at the time of withdrawal from the warehouse. (emphasis added)

The question of what constitutes a manufacture must be addressed in order to determine if the operation is prohibited in a manipulation warehouse. "Manufacture" has been defined for customs purposes in *Anheuser-Busch Brewing Association* v. *United States*, 207 U.S. 556 (1907), where the Supreme Court stated:

> There must be a transformation; a new and different article must emerge, "having a different name, character, or use."

Customs has consistently held that a manufacturing process results when the operation involves cutting according to specifications and for a definite purpose. It is distinguished from cutting which is merely a step in the merchandising to facilitate handling or shipping. The cutting to size specified by customers is required to make the merchandise available to serve a specific use. (See T.D. 54565(24); B/L 2–24–58) A manufacture has occurred when a new article has emerged with a different use.

The fact that a product does not have a distinctive name different from that of the imported product, does not preclude there being a manufacture or production. The requirements of change of name, character, or use given in the definition are stated in the disjunctive. (*United States* v. *International Paint Co.*, 35 C.C.P.A. 87, 93 (1948))

Holding: The cutting and rewinding of jumbo rolls of capacitor tissue paper into smaller width rolls to customers' specifications does not constitute a manipulation permissible under section 562, Tariff Act of 1930, as amended (19 U.S.C. 1562).

(C.S.D. 82–26)

Cartage: A Bonded Cartman May Not Use Vehicles Belonging to Another Person nor Persons Who Are Employees of Another Firm To Conduct Its Own Cartage Operations

Date: August 12, 1981
File: CO:R:CD:D
213088 WR

Issue: Whether a bonded cartman may use vehicles belonging to other persons and employees of another person to conduct bonded cartage operations?

365-073 O - 82 - 3

Facts: A corporate bonded cartman who owns a bonded warehouse wants to let its warehouse customers pick up bonded merchandise from its warehouse and deliver that merchandise to vessels located within the same port. As vessel supplies, the merchandise is entitled to duty-free treatment. The bonded cartman proposes to assume any responsibility, and to obtain consent of the surety on its bond, for any loss or any dereliction of duty that occurred when bonded merchandise is held by one of those warehouse customers who are not bonded cartmen.

Law and analysis: The inquirer noted that under 19 CFR 18.1(a)(1) merchandise delivered to a bonded carrier for in-bond transportation may be transported with the use of facilities of other bonded or non-bonded carriers. In such a situation, the initial bonded carrier and its surety are liable for any liability incurred on any merchandise received by the carrier. The question is whether cartage operations present an analogous situation.

The statutory authority for designation of bonded carriers is 19 U.S.C. 1551. The statutory authority for designation of bonded cartmen is 19 U.S.C. 1565. Under 19 U.S.C. 1551 a common carrier, a contract carrier, or a freight forwarder may be designated as a carrier of bonded merchandise. Because the responsibility for bonded carriers is shared with other federal agencies, the Secretary of the Treasury implemented 19 U.S.C. 1551 with very little discretion with respect to designation exercised by the Customs Service. The provisions in 19 CFR 112.3 direct a district director to approve a bonded carrier's application for designation if the amount of the bond is sufficient, the required documents are furnished, and the fee is paid. Under 19 U.S.C. 1565 the cartage of merchandise must be done by persons who are appointed and licensed by a Customs officer. Because the statute gives the sole responsibility to appoint cartmen to the Customs Service, there are substantial differences between the appointment of bonded cartmen and the designation of bonded carriers. Under 19 CFR 112.23 an applicant for a cartman's license may be investigated with respect to character, qualification, experience, and on the fitness of the applicant's equipment.

The names and addresses of the cartage applicant's managing officers and those of persons who will receive and cart merchandise for the applicant must be submitted on request. The vehicles licensed by Customs for cartage must be marked with the license number. The records of cartage must be kept for Customs examination and employees of the cartman can be required to carry identification cards. See 19 CFR 112.22, 112.23, 112.27, 112.29 and 112.41.

The provision in 19 CFR 18.1(a)(1) which authorized use of non-bonded carrier facilities was established by T.D. 47505. The decision

was adopted to enable a land-based carrier to use air facilities for all or part of the carriage of in-bond merchandise. It is clear that this exception was made in recognition of the fact that on movement from one port to another the facilities of two or more carriers may have to be used to achieve efficient transportation. As cartage operations are geographically limited, except under 19 U.S.C. 1551a, to a specific port, there is no similar need to use different modes of transportation.

If licensed as a cartman, a person can engage in government cartage under 19 CFR 125.11. Also, under 19 CFR 125.13 and 19 CFR 125.13, general order merchandise may be carted. Because of the possibility of access to that merchandise, Customs has a need to exercise more control over cartmen than over carriers. To do otherwise would require that two different classes of cartmen be created, one of which could engage in government and general order cartage.

Holding: A bonded cartman may not use vehicles belonging to another person nor persons who are employees of another firm to conduct its own cartage operations.

(C.S.D. 82-27)

Subject: Classification: Tariff Classification of a Child's Injection Molded Polyvinyl Chloride Protective Boot Under Item 703.53, TSUS

Date: August 24, 1981
File: CLA-2-07:S:C:D6:60-6-516 801148

In a letter dated July 29, 1981, you inquired on behalf of the (corporate name) as to the dutiable status of an injection molded polyvinyl chloride protective boot produced in Holland.

The submitted plastic footwear is a child's knee-high, unit molded, clear PVC rainboot which is supported by a many-colored fabric cloth. The colorful cloth backing shows through the exterior surface of the clear vinyl producing a rainbow effect.

Rubber/plastic footwear of this type is classifiable under the provision for other footwear which is over 50 percent by weight of rubber or plastics which is designed to be worn over, or in lieu of, other footwear as a protection against water or inclement weather in item 700.53, Tariff Schedules of the United States, and dutiable at the rate of 37½ percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

(C.S.D. 82–28)

Subject: Classification: A Multi-Purpose Sport Glove Marketed as a Batting Glove is Classifiable Under the Provision for Other Gloves Specially Designed for Use in Sports (735.07, TSUS)

Date: August 26, 1981
File: CLA–2 CO:R:CV:G
068331 C

Your letter dated February 3, 1981, addressed to the Area Director of Customs at New York concerning the tariff classification of a multi-purpose sport glove manufactured in Korea has been referred to this office for a reply because it raises a complex classification problem.

The sample submitted is an inseam construction glove of synthetic suede with a seller's logo, a vented nylon spandex inset on the back of the hand, perforated air holes on the front and back of the fingers, a velcro closure approximately 1¾ inches square on the back of the hand, and a ¾ inch elastic band around the wrist of the glove.

You state that the glove will be sold as a batting glove. An examination of the sample glove reveals that its features, such as the seller's logo, air holes and velcro closure together with the fact that it is sold singly mandates the conclusion that it is designed for use in sports.

The issue to be resolved is whether the instant glove is classifiable under the provision for other baseball equipment in item 734.56, Tariff Schedules of the United States (TSUS), or is classifiable under the provision for other gloves, not provided for in the foregoing provisions of this subpart, specially designed for use in sports in item 735.07, TSUS.

Information before this office is that at least five other importers and one domestic producer market very similar gloves for use in sports other than baseball.

In our reconsideration of IA 42/78 (our file CLA–2:R:CV:MA 055371 JPC), dated March 13, 1979, this office held that certain leather and nylon gloves designed to be used to play baseball, although advertised for use in several sports and substantially identical to gloves used in other sports, were nevertheless classifiable under the provision for other baseball equipment in item 734.56, TSUS.

In IA 241/79 (our file CLA–2:RRUCGC 065057 MJ), dated October 1, 1980, which we consider controlling in this situation, this office held that a glove marketed as a baseball batting glove but chiefly used as a golf glove is properly classifiable under the provision for golf equipment in item 734.77, TSUS, rather than under the provision for baseball equipment in item 734.56, TSUS.

It is our interpretation of IA 241/79 that where gloves designed for

use in sports are subject to classification under competing provisions in Schedule 7, Part 5, Subpart D, TSUS, classification will be determined by the chief use of the gloves.

General Interpretative Rule 10(e)(i), TSUS, provides that "a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of articles of that class or kind to which the imported articles belong, and the controlling use is the chief use, *i.e.*, the use which exceeds all other uses (if any) combined."

Based on information currently before this office it is doubtful that there is a use for the subject glove which exceeds all other uses combined because it is marketed for at least three major sports namely racketball, golf and baseball.

Based on the foregoing, it is our position that the glove in issue is properly classifiable under the provision for other gloves, not provided for in the foregoing provisions of the subpart, specially designed for use in sports in item 735.07, TSUS, and dutiable at the rate of 6.9 percent ad va'orem or entitled to free entry under the Generalized System of Preferences if qualified.

(C.S.D. 82-29)

Subject: Foreign Trade Zone: A Camera Body and Lens Physically Attached or Packaged Together are Considered an Entirety When Transferred From an FTZ and Entered for Consumption or Warehousing

Date: August 31, 1981
File: FOR-1-CO:R:CD:D
213283 WL

Issue: Two issues are raised with respect to foreign-trade zones (FTZ):

1. Is a camera, composed in part of a camera body with privileged domestic status, and in part of a lens with nonprivileged foreign status, which are either physically attached or packaged together, classifiable as an entirety upon transfer from the FTZ for entry for consumption or entry for warehouse?

2. When merchandise as described above is transferred from a FTZ and entered for consumption or warehousing, is it subject to appraisement in accordance with section 146.48(e)(2), Customs Regulations (19 CFR 146.48(e)(2)), and the second proviso of 19 U.S.C. 81c, so that any cost of processing within the FTZ, or general expenses or profit related to FTZ operations, or similar costs incurred

after the aggregation process is completed, but prior to the transfer of the shipment out of the FTZ, or the value attributable to the privileged domestic merchandise admitted to the FTZ, excluded from the value of the article in its condition as entered for consumption or warehousing?

Facts: A domestic company proposes to import lenses from foreign suppliers directly into its facility in a FTZ, where the lenses would be admitted as nonprivileged foreign merchandise. The company also proposes to transfer to the same FTZ facility various quantities of camera bodies it manufactures in the United States, complete except for their lens attachments. These camera bodies would be entered into the FTZ as privileged domestic merchandise.

The company proposes to aggregate within the FTZ equal numbers of its camera bodies and their appropriate lenses. The process of aggregation may be accomplished by a physical attachment of a lens to a camera body; by a physical binding of a package containing one lens to a package containing one camera body; or by a prominent designation or marking on each package containing a lens and a camera body, respectively, as one of two parts in the same shipment. None of these forms of aggregation will destroy the separate identity of the privileged domestic component.

Law and anaylsis: Addressing the first issue, it is clear from a classification standpoint that camera bodies and compatible lenses imported in the same shipment, whether or not attached, would be considered as entities classifiable as cameras. Note General Interpretive Rule 10(h), Tariff Schedules of the United States (TSUS), and *Unimark Photo, Inc.* v. *United States*, C.D. 2283.

In *Unimark*, certain supplementary lenses made for multipurpose turret cameras were held classifiable as entireties with the cameras rather then separately as photographic lenses. The court stated that the identity of the attached lenses was subordinated in the creation of new entities, motion picture cameras, which were new articles of commerce.

This rationale was followed in Internal Advice Ruling 56/77 (see also C.I.E. 226/63, March 4, 1963). There, imported and domestic parts of hemoglobinometers were assembled in a FTZ and, upon entry, were classified as new and different products made in the FTZ.

Accordingly, it is our view that the camera and lens aggregated by any of the means specified would be treated as single entities upon entry for consumption or for warehouse (assuming there is no manipulation in warehouse), and classifiable as cameras.

The second issue relates to the appraisement of privileged domestic camera bodies and nonprivileged foreign lenses physically attached or packaged together in a FTZ.

In this regard, the relevant portion of section 146.48(e)(2), Customs Regulations (19 CFR 146.48(e)(2)), provides that:

> * * * the cost of fabrication or other processing, and the general expenses and profit, related to zone operations shall be excluded when determining the dutiable value of an article produced * * * from a combination of privileged and nonprivileged merchandise (foreign or domestic). All other expenses incurred in the zone incidental to placing the article in condition, packed ready for transfer, and freight, insurance, and similar costs incurred after the article is packed and ready for transfer into the Customs territory also shall be excluded in determining dutiable value.

Consequently, all labor, overhead, profit, and other costs incurred by the importer as an incident to its proposed aggregation procedure within the FTZ, including freight, insurance, and similar costs related to its transfer out of the FTZ, are excluded from the dutiable value.

Holding: 1. A camera, composed in part of a lens with nonprivileged foreign status, and in part of a camera body with privileged domestic status, either physically attached or packaged together, is classifiable as an entirety upon transfer from the FTZ for entry for consumption or entry for warehouse.

2. Merchandise as described above, where transferred from the FTZ to Customs territory will be subject to appraisement in accordance with section 146.48(e)(2), Customs Regulations.

(C.S.D. 82-30)

Subject: Drawback: A drawback claimant may exercise the option of reconstructing records owing to accidental loss or by providing necessary proof of records by other means

Date: September 2, 1981
File: DRA-1-09-CO:R:CD:D
213353 B
213354
213355
213356

Re: Further Review of Protests Nos. 2809-1-000265; 000266; 000267 and 000268 (San Francisco)—Drawback—Recordkeeping—19 CFR 22.5 (a)

REGIONAL COMMISSIONER OF CUSTOMS,
San Francisco, Calif.

DEAR SIR: The referenced protests and requests for further review were filed against decisions by your staff in four drawback entries,

80–114585–0 and 80–114586–3 of April 1, 1980, 80–117132–9 and 80–117133–2 of June 17, 1980, to liquidate "no drawback" due to the failure of the claimant to submit or have available for audit records showing use in manufacture of imported duty-paid and domestic sugars.

Facts: Protestant corporation is sole owner of a corporation holding a rate of drawback covering refined sugar. Two fires at the latter's premises destroyed manufacturing records for the period of manufacture which the above drawback entries cover. The protestant parent corporation has on file all purchase orders received from its subsidiary and can substantiate by records that its subsidiary received the sugar in question. The protestant also has all shipping orders for exports which are sent by the subsidiary once an order is met. Further, the subsidiary is a toll operator under T.D. 55207(1) so its formulations are those of the protestant. Therefore, alleges protestant, the actual sugar content of each exported product is known.

Protestant alleges that no field audit occurred and that the information as to lack of records was supplied telephonically by the controller of the subsidiary. Protestant argues that it be allowed to reconstruct production records and that liquidation be withheld on all claims until such time as protestant can reconstruct. Your staff believes liquidation is valid as protestant is unable to furnish records required by subsections (2), (3), (4), and (5) of section 22.5(a), C.R.

Law and analysis: The noted regulations clearly require the availability of certain records before drawback can be paid. However, as pointed out by protestant's broker, we have always allowed a drawback claimant the options of reconstructing lost records or providing necessary proof of records by other means.

Shortly after the fires, protestant immediately informed Customs and asked that alternative records be used in case of audit. Protestant also alleges that no audit was conducted and the audit report was completed based on information given telephonically by the controller of the subsidiary. This fact is supported by the audit report you provided.

Under the provisions of section 22.13(a), C.R., a claimant has three years after exportation in which to complete a drawback claim. The subject entries were liquidated "no drawback" 8½ and 6 months after the respective entries, based on an audit report supported by a telephone conversation. There is nothing in the file to indicate protestant was given the opportunity to reconstruct its subsidiary's records or produce alternative records which might satisfy the auditor. We believe, based on the reason for lack of firsthand records, that equity demands that protestant be given the opportunity to comply with the regulations by reconstruction or other alternative means.

Holdings: You are directed to allow the protests in full. Liquidation of other claims based on the period for which records are lacking should be withheld pending disposition of the four entries on which the protests were based.

365-073 O - 82 - 4

Recent Unpublished Customs Service Decisions

The following listing of recent administrative decisions issued by the U.S. Customs Service, and not otherwise published, is published for the information of Customs officers and the importing community. Although the decisions are not of sufficient general interest to warrant publication as Customs Service Decisions, the listing describes the issues involved and is intended to aid Customs officers and concerned members of the public in identifying matters of interest which recently have been considered by the U.S. Customs Service. Individuals to whom any of these decisions would be of interest should read the limitations expressed in 19 CFR 177.9(c).

A copy of any decision included in this listing, identified by its date and file number, may be obtained in a form appropriate for public distribution upon written request to the Office of Regulations and Rulings, Attention: Legal Retrieval and Dissemination Branch, Room 2404, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229. These copies will be made available at a cost to the requester of $0.10 per page. However, the Customs Service will waive this charge if the total number of pages copied is ten or less.

Decisions listed in earlier issues of the Customs Bulletin, through June 15, 1981, are available in microfiche format at a cost of $34.05 ($0.15 per sheet of fiche). It is anticipated that additions to the microfiche will be made quarterly and subscriptions are available. Requests for the microfiche now available and for subscriptions should be directed to the Legal Retrieval and Dissemination Branch. Subscribers will automatically receive updates as they are issued and will be billed accordingly.

Dated: January 25, 1982.

B. JAMES FRITZ,
Director,
Regulations Control and Disclosure Law Division.

Date of decision	File No.	Issue
10-30-81	801322	Classification: Dried plants and flowers (748.21, 748.25, 748.30, 748.32, 748.34, 748.36, 799.00)
10-22-81	801361	Classification: Rotary mower and sicle bar mower (666.00)

Date of decision	File No.	Issue
10-30-81	801380	Classification: Tractor models with or without a cab (692.34)
10-08-81	801385	Classification: Electronic parking machines (676.25, 715.53)
10-06-81	801406	Classification: Net textile material shopping bag (386.09)
10-06-81	801420	Classification: Basket shelving system (727.55)
10-20-81	801431	Classification: Soap paper (466.30)
10-06-81	801433	Classification: Feminine sanitary napkins (256.70, 256.90)
10-30-81	801443	Classification: Animal feed ingredients (184.80)
10-22-81	801458	Classification: Woven boy's shirts (382.00, 382.04, 382.33, 382.81)
10-06-81	801463	Classification: Edible protein peanut extract (183.05)
10-06-81	801464	Classification: Flavored milk beverage (118.30, 950.11)
10-22-81	801467	Classification: Blended cotton woven fabric (328.11)
10-30-81	801476	Classification: Stabilizer used as a preservative for cosmetic preparations (413.51)
10-20-81	801483	Classification: Warp knit fabrics (345.10, 345.50, 346.60, 351.80, 352.80, 386.09, 389.40)
10-22-81	801485	Classification: Surstabilizer as a preservative for cosmetic emulsions (413.51)
10-22-81	801503	Classification: Steel wool wire (609.41)
10-22-81	801504	Classification: Aluminum covers for pocket telephone listings (657.40)
10-22-81	801515	Classification: Brassieres (376.28, 807.00)
10-30-81	801517	Classification: Plastic roller pins for hair (750.25)
10-27-81	810518	Classification: Aluminum plate for polishing gold, silver and jewelry (654.11)
10-22-81	801527	Classification: Heating elements (684.50)
10-22-81	801533	Classification: Child's sandal (700.54)
10-27-81	801537	Classification: Ironing board covers (772.15)
10-27-81	801542	Classification: Asulox herbicide (408.38)
10-26-81	801545	Classification: Insulated electrical cable (688.04)
10-26-81	801565	Classification: Woman's terry cap (702.12)
11-17-81	801568	Classification: Ladies knit sweaters (382.78, 383.80)
11-17-81	801625	Classification: Ladder tape for venetian blinds (348.00, 389.40)
11-17-81	801638	Classification: Table runner, napkin, shower curtain and placemat (366.46, 367.45, 369.91)
11-18-81	801639	Classification: Ladies evening bags of cotton and man-made fibers (706.22, 706.28)
11-17-81	801655	Classification: Plastic cheese cutter (651.55)
11-24-81	801662	Classification: Embroidery thread and yarns; nonwoven and laminated fabrics (310.91, 303.20, 310.60, 307.68, 355.25, 359.50)
10-27-81	800671	Classification: Man's woven synthetic jacket (380.84)
11-20-81	801690	Classification: Rubber suction cup (774.25, 774.55)
12-11-81	801693	Classification: Ladies knit sweaters (383.18, 383.80)

Date of decision	File No.	Issue
12-14-81	801731	Classification: Rubber seals and gaskets for pipelines (773.25)
12-11-81	801771	Classification: Ladies knit wearing apparel (383.27, 383.30, 383.80, 382.06, 382.78)
12-14-81	801835	Classification: Airport cargo/baggage cart (692.60)

ERRATUM

In CUSTOMS BULLETIN Vol. 16, No. 4, dated January 27, 1982, page 32 in the second paragraph line 6 it should read as follows: "81-160 and T.D. 82-15", etc.

Decisions of the United States Court of Customs and Patent Appeals

Appeal No. 81-12

Royal Business Machines, Inc. v. *The United States; Philip M. Klutznick, Secretary of Commerce; Robert E. Herzstein, Under Secretary of Commerce for International Trade, Department of Commerce; Robert E. Chasen, Commissioner of Customs; and John E. Brady, District Director of Customs, Los Angeles, California; and Smith-Corona Group, Consumer Products Division, SMC Corporation (intervenor).*

DISMISSAL BY COURT OF INTERNATIONAL TRADE FOR WRIT OF MANDAMUS ANTIDUMPING PROCEEDING—JURISDICTION—TIMELY ACTION UNDER 19 U.S.C. 1516(a)

Appeal from judgment of the United States Court of International Trade, 1 CIT——, 507 F. Supp. 1007 (1980), dismissing appellant's action for writ of mandamus to compel Customs Service to liquidate certain entries without imposition of antidumping duties. Court of International Trade held that, although appellant based its action on 28 U.S.C. 1581(i), proper basis was 19 U.S.C. 1516a (which is within the jurisdiction of the Court of International Trade under 28 U.S.C. 1581(c)) and, as a consequence, the court was without jurisdiction to hear this case because appellant failed to commence its action within the thirty-day period prescribed by 19 U.S.C. 1516a. Affirmed.

2. ID.

Section 516a expressly permits an interested party to commence an action to contest "any factual findings or legal conclusions upon which the determination [of sales at less than fair value and material injury to a United States industry] is based"; also, it requires that any such action be commenced within thirty days after date of publication of the antidumping duty order in the Federal Register.

3. ID. SECTION 516a NOT EXCLUSIVE REMEDY

Section 516a is *not* the "*exclusive* remedy for all grievances arising from the administration of the antidumping law."

4. ID. LEGISLATIVE HISTORY—ANTIDUMPING DUTY DETERMINATION

It is apparent from legislative history of 28 U.S.C. 1581(i) that Congress envisioned occasions when an aspect of an antidumping duty determination might fall within the court's jurisdiction under section 1581(i).

5. ANTIDUMPING DUTY DETERMINATION

Customs Regulations indicate that contents of an antidumping duty determination are multifaceted and that the "factual findings and legal conclusions upon which the determination is based" comprise only one aspect of the determination.

6. ID. ANTIDUMPING DUTY DETERMINATION—516a ACTION

The elements of an antidumping duty determination which are specified in section 516a and which may be contested through a section 516a action are the factual findings and legal conclusions underlying the determination.

7. ID.

Unless there is an express factual finding or legal conclusion with respect to the scope of the antidumping duty order ("description of the merchandise involved"), section 516a would not preclude an action based on section 1581(i).

8. COSTS OF PRINTING TRANSCRIPT ASSESSMENT

In view of the complex factual background of this case, reliance by *all* parties on many of the exhibits designated by the government and intervenor, and aid to this court, supplied by the oral arguments before the Court of International Trade, in understanding the issues, we do not agree that the designations for the transcript are unnecessary, and appellant's motion to impose on appellee and intervenor certain costs of printing is denied.

(F. 2d)

ROYAL BUSINESS MACHINES, INC., APPELLANT *v.* THE UNITED STATES; PHILIP M. KLUTZNICK, SECRETARY OF COMMERCE; ROBERT E. HERZSTEIN, UNDER SECRETARY OF COMMERCE FOR INTERNATIONAL TRADE, DEPARTMENT OF COMMERCE; ROBERT E. CHASEN, COMMISSIONER OF CUSTOMS; AND JOHN E. BRADY, DISTRICT DIRECTOR OF CUSTOMS, LOS ANGELES, CALIFORNIA, APPELLEES. SMITH-CORONA GROUP, CONSUMER PRODUCTS DIVISION, SMC CORPORATION, INTERVENOR.

United States Court of Customs and Patent Appeals, January 21, 1982, Appeal from United States Court of International Trade.

[Affirmed]

Michael S. O'Rourke, Patrick D. Gill, of New York, New York, attorneys for appellant.

Stuart E. Schiffer, Acting Asst. Atty. General, *David M. Cohen*, Director, *Velta A. Melnbrencis*, of Washington, D.C., attorneys for appellees.

Eugene L. Stewart, Terence P. Stewart, of Washington, D.C., *Edwin Silverstone, Esq.*, of New York, New York, attorneys for intervenor.

[Oral argument on October 5, 1981 by *Michael S. O'Rourke* for appellant, *Velta A. Melnbrencis* for appellee and *Terence P. Stewart* for intervenor.]

Before MARKEY, *Chief Judge*, RICH, BALDWIN, MILLER, and NIES, *Associate Judges*.

MILLER, *Judge*.

[1] This appeal is from a judgment of the United States Court of International Trade, 1 CIT——, 507 F. Supp. 1007 (1980), dismissing appellant's action for a writ of mandamus to compel the Customs Service to liquidate certain entries without imposition of antidumping duties. The basis for the action was that the imported merchandise was not within the scope of the antidumping duty order that described the merchandise as portable electric typewriters provided for under item 676.0510, Tariff Schedules of the United States Annotated ("TSUSA"). The Court of International Trade held that, although appellant based its action on 28 USC 1581(i), the proper basis was 19 USC 1516a (which is within the jurisdiction of the Court of International Trade under 28 USC 1581(c)) and, as a consequence, the court was without jurisdiction to hear this case because appellant failed to commence its action within the thirty-day period prescribed by 19 USC 1516a. We affirm.

BACKGROUND

The involved merchandise consists of typewriters imported into this country under the name "Royal Administrator" ("Administrator"). The Administrator is manufactured in Japan by Silver Seiko Co., Ltd. ("Seiko") and imported by the Royal Typewriter Company, a division of appellant. On April 9, 1979, the Smith-Corona Group, Consumer Products Division, SCM Corporation ("SCM"),[1] filed a petition with the Commissioner of Customs seeking initiation of an antidumping investigation concerning specified electric typewriters from Japan expressly including Seiko's Administrator. In addition, SCM indicated that these typewriters were classified under item 676.0510, TSUSA,[2] and that "Royal Typewriter, Hartford" was an importer of the subject merchandise.

[1] SCM has participated in these appellate proceedings as an intervenor.

[2] Schedule 6, Part 4, Subpart G, of the TSUSA in pertinent part provides:

Item	Stat. suffix		
		Typewriters not incorporating a calculating mechanism:	
676.05		Non-automatic with hand-operated keyboard	free
		Portable:	
	10	Electric	
	30	Nonelectric	
		Other:	
	40	Electric	
	60	Nonelectric	

The statistical suffix is a statistical extension or breakout authorized by 19 USC 1484(e) for statistical purposes and does not affect the rate of duty.

Notice of initiation of an antidumping investigation pursuant to SCM's petition was published in the Federal Register on May 18, 1979,[3] and stated:

> * * * On April 9, 1979, a petition in proper form was received * * * [from SCM], alleging that portable electric typewriters from Japan are being, or are likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 *et seq.*).
>
> For purpose of this notice, portable electric typewriters are provided for in item 676.0510, Tariff Schedules of the United States Annotated.

Although reference to the Administrator was not made in the notice, in response to an antidumping questionnaire for manufacturers, Seiko stated that—

> [e]leven different portable electric typewriter models are included in the merchandise under consideration, as indicated below:—
>
> * * * * * * *

10. Administrator.

On December 28, 1979, the General Counsel of the Treasury Department issued a "Withholding of Appraisement Notice" and a tentative determination of sales at less than fair value under 19 U.S.C. 160, which has to do with dumping investigations. The notice became effective and was published in the Federal Register on January 4, 1980.[4] It directed customs officers to "withhold appraisement of portable electric typewriters from Japan in accordance with [19 CFR 153.48 ."[5] Seiko was named one of three Japanese manufacturers under investigation, and portable electric typewriters were defined as those provided for in item 676.0510, TSUSA.[6]

---

[3] 44 Fed. Reg. 29191 (1979).

[4] 45 Fed. Reg. 1220 (1980).

[5] 45 Fed. Reg. 1220, 1221 (1980). In pertinent part, 19 CFR 153.48 provides:

§ 153.48 Action by the district director of Customs.

(a) *Appraisement withheld; notice to importer.* Upon receipt of advice from the Commissioner pursuant to § 153.35, district directors of Customs shall withhold appraisement as to merchandise entered or withdrawn from warehouse, for consumption on or after the date of publication of the "Withholding of Appraisement Notice", unless the Secretary's "Withholding of Appraisement Notice", specifies a different effective date. Each district director of Customs shall notify the importer, consignee, or agent immediately of each lot of merchandise with respect to which appraisement is so withheld. Such notice shall indicate: (1) the rate of duty of the merchandise under the applicable item of the Tariff Schedules of the United States (19 U.S.C. 1202) if known; and (2) the estimated margin of the special dumping duty that could be assessed. Upon advice of a finding made in accordance with section 153.43, the district director of Customs shall give immediate notice thereof to the importer when any shipment subject thereto is imported after the date of the finding and information is not on hand for completion of the appraisement of such shipment.

(b) *Request to proceed with appraisement.* If, before a finding of dumping has been made, or before a case has been closed without a finding of dumping, the district director of Customs is satisfied by information furnished by the importer or otherwise that the purchase price or exporter's sales price, in respect of any shipment, is not less than the foreign market value (or, in the absence of such value, than the constructed value), the district director shall so advise the Commissioner and request his authorization to proceed with his appraisement of that shipment in the usual manner.

Appellant has not argued that it was not notified of the withholding of appraisement.

[6] During the injury determination hearing before the International Trade Commission ("ITC"), counsel for appellant admitted that after publication of the "Withholding of Appraisement Notice," liquidation of entries of the Administrator was suspended. Moreover, during a hearing before the Court of International Trade, counsel for appellant admitted that, prior to the publication of this notice, the Administrator was entered and liquidated under item 676.0510, TSUSA; that not until March or April of 1980 were any entries made under item 676.0540, TSUSA; that, despite entry under item 676.0540, an antidumping duty bond had been required of appellant by the Customs Service; and that the entries remained unliquidated.

The new antidumping provisions of the Trade Agreements Act of 1979 (19 USC 1671 *et seq.*) became effective on January 1, 1980; responsibility for their administration was transferred to the Secretary of Commerce.[7] By letter dated January 4, 1980, the Director, Office of Policy, Office of the Assistant Secretary for Trade Administration, Department of Commerce, referred the antidumping investigation to the ITC for an injury determination. Notification of institution of antidumping investigation and scheduling of hearings was published by the ITC on January 17, 1980.[8] Included was a final hearing date for "Portable electric typewriters, provided for in TSUS item 676.05/ Japan," which was set for April 10, 1980. The notification concluded as follows:

> A report containing preliminary findings of fact prepared by the Commission's professional staff will be made available to all interested persons prior to the hearing. Any person's prehearing statement must be filed on or before the indicated date. All parties that desire to appear at the hearing and make oral presentations must file prehearing statements.* * *

On March 11, 1980, counsel for appellant submitted a letter requesting permission to appear at the final hearing stating:

> Royal Business Machines, Inc., is an importer and distributor of various types of office business machines including portable electric typewriters which have been manufactured by Silver Seiko Co., Ltd. *These machines are of the type subject to the determination dated January 4, 1980, by the Treasury Department, that certain portable electric typewriters are being, or likely to be, sold at less than fair value.* Accordingly, Royal Business Machines, Inc., has a proper interest in the subject matter within the meaning of the Regulations and requests to participate in the investigation and hearing before the Commission.
>
> We request a copy of the Commission Staff Report so that we may submit a timely pre-hearing statement prior to the tentative hearing date of April 10, 1980. [Emphasis supplied.]

Notice of the Commerce Department's final determination of sales at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 [9] (19 USC 1673) was published in the Federal Register on March 21, 1980.[10] For purposes of this notice, the typewriters were described in the same way as in the notice of initiation of the investigation, *i.e.*, as those falling within item 676.0510, TSUSA; Seiko was expressly named and discussed as a manufacturer of merchandise under investigation and within the scope of the determination.

[7] 44 Fed. Reg. 63273 (1979); 45 Fed. Reg. 989 (1980). Section 102(b)(2) of the Trade Agreements Act of 1979 (19 USC 1671) requires that ITC conduct antidumping investigations in cases where, prior to January 1, 1980, as here, the Secretary of the Treasury has made a tentative, but not a final determination of sales at less than fair value.

[8] 45 Feb. Reg. 3401 (1980) (order was issued January 10, 1980).

[9] Pub. L. No. 96-39, 93 Stat. 162.

[10] 45 Fed. Reg. 18416 (1980).

365-073 O - 82 - 5

In its prehearing statement filed April 8, 1980, appellant, for the first time, argued that the Administrator was not within ITC's definition of a portable electric typewriter because of its physical characteristics; that "it has been erroneously included by SCM in its complaint and subsequent correspondence * * *"; and that, alternatively, it was not a cause of material injury to SCM. SCM, in its initial petition, prehearing statement, posthearing submission, and other miscellaneous correspondence continuously included the Administrator within the listing of specific merchandise identified as having been sold contrary to the provisions of the antidumping laws.

During the final injury determination hearing before ITC on April 10, 1980, the following colloquy was recorded between Vice Chairman Alberger ("Chairman") and appellant's counsel ("Counsel"):

> [Chairman]: * * * Is the tariff classification for the Royal Administrator a portable typewriter or a non-portable?
>
> [Counsel]: * * * [T]he tariff classification is 67605, it is the five-digit number. There are four additional two-digit statistical break-outs. Unfortunately, and I have discussed this directly with the National Advisory Imports specialist who is responsible for typewriters, there is no—within the five-digit classification—there is no room to differentiate between an office typewriter and a portable, because their differentiation is the break-out when the machine has what they call "automatic features", which would be something like a mag card system.
>
> * * * * * * *
>
> So within the five-digit category there is no differentiation. I would submit that we would be properly classifiable under 6760540 which is electric typewriters, other, because there is a break-out for portable typewriters statistically.
>
> [Chairman]: But since it's not coming in anymore, it's not something that you are contesting; is that right?
>
> [Counsel]: Yes, and I might add that, of course there are some entries that have been—that were subsequent to the Notice of Suspension and Liquidation, so there are unliquidated entries.
>
> But I would add, parenthetically, that as the Commission knows, there is no duty on electric—portable electric typewriters. And, candidly, from a business standpoint, the statistics, whether it's 0510 or 0540 are meaningless, as far as a business person is concerned.
>
> I realize that maybe as far as the Department of Commerce, they would like to see more concern about things like this.
>
> But from a businessman's standpoint, when you are not paying any duty, they just don't—it's not a real concern to break the statistics out.

ITC made a unanimous, affirmative determination "that an industry in the United States is materially injured by reason of imports of portable electric typewriters provided for in item 676.05 of the [TSUS]

from Japan," [11] and on May 1, 1980, notified the Secretary of Commerce. In its "Statement of Reasons," when discussing the domestic industry and comparing the imported products, ITC in a footnote stated:

> The Royal "Administrator" typewriter for customs purposes is classified as a portable electric typewriter under item 676.05 of the Tariff Schedules of the United States. The "Administrator" is priced competitively with portable electric typewriters and is marketed in much the same way. Thus, for the purposes of this investigation, the Commission has included the Administrator in the category of imports which are subject to this investigation.

Under the "Additional Views of Chairman Catherine Bedell," in a section entitled "*Conclusions of Law*," it was observed: "The Royal Administrator * * * is appropriately considered a portable electric typewriter for purposes of this investigation."

Notice of the Commerce Department's antidumping duty order appeared in the Federal Register on May 9, 1980,[12] and stated:

> This notice is to inform the public that separate investigations conducted under the Antidumping Act * * * have resulted in determinations that portable electric typewriters from Japan are being sold at less than fair value and that these sales are materially injuring an industry in the United States. All unappraised entries of this merchandise made on and after January 4 1980, the date on which liquidation was suspended will be liable for the possible assessment of special dumping duties. Deposits of estimated antidumping duties shall be required of all entries made on and after the date of publication of this antidumping duty order in the Federal Register.
>
> * * * * * * *
>
> In accordance with [19 USC 1673e] Customs officers are directed to assess an antidumping duty equal to the amount the United States price of the merchandise for all entries subject to the "Withholding of Appraisement" notice published in the Federal Register on January 4, 1979 [*sic* 1980] and all future entries until further notice. On or after the date of publication of this notice, Customs officers shall require, at the same time as estimated normal customs duties on the merchandise are deposited, a deposit of estimated antidumping duties pending liquidation of entries of the subject merchandise on all entries, or withdrawals from warehouse, for consumption. Deposits shall be collected in the following amounts: * * * Silver Seiko: 36.53 percent *ad valorem;* * * *
>
> * * * * * * *
>
> For the purposes of this notice, the term "portable electric typewriters" are those provided for in item 676.0510, [TSUSA].

---

[11] Portable Electric Typewriters from Japan," USITC Publicatiou 1062, 45 Fed. Reg. 30186 (May 1980).
[12] 45 Fed. Reg. 30613 (1980).

On May 30, 1980, appellant's counsel submitted a letter to the Import Administration Specialist at the Department of Commerce arguing that the Administrator, because of its physical characteristics, was not within the terms of the May 9, 1980, order and was not subject to special dumping duties, not being classifiable under item 676.0510, TSUSA. The letter acknowledged that "[ITC] in its ruling held that this machine, which is manufactured by [Seiko], in Japan was for the purpose of the investigation classifiable under item 676.05, TSUS," and that "[c]learly, this is the proper five digit TSUS number for the Administrator." Howevcr, the letter noted that "the applicable statutes and regulations require that [appellant] use a seven digit number to enter this merchandise" and asserted that "the merchandise is properly classifiable under item 676.0540," TSUSA.

Appellant's letter was forwarded to Customs by the Director, Office of Compliance, International Trade Administration, Department of Commerce. In an accompanying cover letter directed to the Customs Service, Director, Classification and Value Division, it was stated:

> If the models in question are classified under item 676.0540, TSUSA, they would not be within the scope of our Antidumping Duty Order and would not be subject to antidumping duties. However if they are classified as portable electric typewriters under item 676–0510, TSUSA, they would be within the scope of our finding and subject to antidumping duties.

The letter requested that the Customs Service advise the Commerce Department regarding the proper statistical classification of the merchandise. In response to this request, on August 7, 1980, the Customs Service determined that the Administrator was not classifiable within item 676.0510, TSUSA, and stated:

> * * * [W]e believe that [the Administrator is] not subject to the dumping duties. The class or kind of typewriter considered by Commerce and USITC appears to be restricted to those reportable under item 676.0510, TSUSA. Absent a different description of the class or kind of imports, only those portable electric typewriters reportable in item 676.0510, TSUSA, are subject to the dumping duties. The fact that the Royal Administrator was considered as a portable by Commerce and USITC should not be controlling at this point because the class or kind has been circumscribed by item 676.0510, TSUSA.

Appellant filed its complaint on November 18, 1980, alleging that:

> [T]he Court has jurisdiction and * * * plaintiff has standing in this matter pursuant to provisions of 5 U.S.C. 702, 28 U.S.C. 1581(i), 28 U.S.C. 2631(i), and 28 U.S.C. 1585;

It requested that the Court of International Trade:

> (1) Issue a temporary restraining order and preliminary injunction enjoining * * * [the] Secretary of Commerce, * * * Under Secretary for International Trade, Department of Commerce, and their delegatees, officers or agents subordinate to them, from conducting further antidumping proceedings with respect to the Royal Administrator and enjoining [them] from issuing any modification or other alteration of Commerce's antidumping duty order of May 9, 1980 [45 F.R. 30618–19];
>
> (2) Issue a writ of mandamus ordering * * * [the] Commissioner of Customs, * * * District Director of Customs, Los Angeles, California, their delegatees, officers or agents subordinate to them to
>
> (a) cancel all antidumping duty bonds on current entries of the Royal Administrator made between January 4, and May 9, 1980, and
>
> (b) to remove the Royal Administrator from the list of machines subject to the withholding of appraisement notice published in the *Federal Register* on January 4, 1980, and [*sic* no further subparagraphs]

During proceedings before the Court of International Trade, the government submitted an affidavit of the Deputy Assistant Secretary for Import Administration ("Deputy"), Department of Commerce, who affirmed that:

> 6. Following the Customs classification ruling, employees of the International Trade Administration's Office of Compliance received written comments from interested parties, including plaintiff's counsel, on the effect of the Customs ruling on the scope of the Department's antidumping duty order.
>
> 7. Staff of the Office of Compliance have met with attorneys in the General Counsel's Office to discuss this issue and to make a recommendation as to whether the Department's May 9, 1980, order continues to apply to the Royal Administrator typewriter model.
>
> * * * * * * *
>
> 9. * * * I have the responsibility and the authority to make the Department's determination as to whether or not the Royal Administrator model typewriter remains within the scope of the May 9, 1980, antidumping duty order.
>
> 10. At this time I have not received a final recommendation * * * concerning the Department's resolution of this question.
>
> 11. At this time I have made no determination as to the Department's position with respect to this question.

The Court of International Trade dismissed appellant's action for lack of jurisdiction because of failure of appellant to bring its action within thirty days after publication of the antidumping duty order

in the Federal Register on May 9, 1980, as required by 19 USC 1516a ("section 516a").[13] To justify this action, the court said:

> To begin with, the issuance of a final antidumping duty *order* is purely a ministerial act. It is *not* the final expression of the administrative *determinations*. The final order is really the first step in the *enforcement* of the consequences mandated by statute when it has been determined that certain articles are being sold at less than their fair value and are materially injuring a domestic industry. It is the first step in the mandatory assessment of antidumping duty.
>
> It follows that plaintiff had no more reason to concentrate on the final order and believe itself unaggreived than a judgment debtor has to think that a questionable execution removes it from a judgment. It further follows that the final order must express the result of the previous determinations without alterations and neither the Commerce Department, as the administering authority, or the Customs Service, by exercise of its classification authority, could legally change the results of the less than fair value and injury determinations or modify the facts or legal conclusions on which those determinations depended.
>
> * * * * * * *
>
> * * * [E]ven if plaintiff believed itself to be an "orange" among "apples", so long as the Department of Commerce and the ITC were considering it to belong to a certain class it remained so for the purpose of the proceedings. The Court has no doubt that the Royal Administrator was included in the administrative investigations from their commencement until their conclusion in final determinations.
>
> Following the specific ITC injury determination the only legal significance of the final antidumping duty order for plaintiff was as a signal that the time to bring an action for judicial review of the less than fair value and injury determinations was beginning to run. At that point the aggrievement had occurred by reason of the inclusion of the plaintiff's product in the *final determinations*,

---

[13] 19 USC 1516a provides in pertinent part:

> 19 USC § 1516a. Judicial review in countervailing duty and antidumping duty proceedings
>
> (a) Review of determination.—
>
> * * * * * * *
>
> (2) Review of determinations on record.—
>
> (A) In general. Within thirty days after the date of publication in the Federal Register of—
>
> * * * * * * *
>
> (ii) an antidumping or countervailing duty order based upon any determination described in clause (i) of subparagraph (B),
>
> an interested party who is a party to the proceeding in connection with which the matter arises may commence an action in the United States Court of International Trade by filing [a summons, and complaint] . . . *contesting any factual findings or legal conclusions upon which the determination is based.* [Emphasis supplied.]
>
> (B) Reviewable determinations.—The determinations which may be contested under subparagraph (A) are as follows:
>
> (i) Final affirmative determinations by the Secretary and by the Commission under section 1303 of this title, or by the administering authority and by the Commission under section 1671d or 1673d of this title.

28 USC 1581(c) provides for jurisdiction of the Court of International Trade over actions under 19 U.S.C. 1516a.

> the *final order* could not do less than effectuate the final determinations, and the statutory remedy was available to contest "any factual findings or legal conclusions" underlying the determinations. 19 U.S.C. § 1516(a) [*sic* 1516a].
>
> * * * * * * *
>
> It is plain that the action is directed at the basis of the final *determinations* and not at the final *order*. In view of the fact that plaintiff's actual agrievement [*sic*] was inclusion in the final determinations, it should have brought an action under 19 U.S.C. § 1516a(2). It follows that a later administrative action, if taken in conformity with those final determinations, could not represent a new aggrievement of plaintiff. Thus, if the Department of Commerce now wishes to clarify and perfect the final order to dispel the confusion which has arisen, it may do so.
>
> * * * * * * *
>
> The court notes that the dismissal is not grounded on the basis urged by the defendant, i.e., that the action under 19 U.S.C. § 1516a is the *exclusive* remedy for all grievances arising from the administration of the antidumping law. For *this* grievance the action under 19 U.S.C. § 1516(a) [*sic* 1516a] was an adequate remedy. [Footnotes omitted.]

As foreseen by appellant and authorized by the Court of International Trade in its opinion, the Deputy, Department of Commerce, issued on February 25, 1981, a "Notice of Clarification of Scope of Antidumping Duty Order and of Correction to Early Determination of Antidumping Duties" [14] as follows:

> This clarification is necessary to insure that articles included within the class or kind of merchandise covered by the Department's and ITC's investigations are within the scope of the order. Accordingly, for purposes of the May 9 antidumping duty order and the August 13 early determination of antidumping duties, the Department defines "portable electric typewriters" as all typewriters currently classifiable under TSUSA 676.0510, and some currently classifiable under 676.0540, depending on their individual characteristics. The Royal Administrator, therefore, is within the scope of the order.

Appellant argues that it is entitled to the requested relief because the Administrator is not a *portable* electric typewriter, is classifiable under item 676.0540 and not under item 676.0510, TSUSA, so that it is not circumscribed by the literal terms of the antidumping duty order; that to prevent a broadening of the scope of the order to include the Administrator, appellant is entitled to bring an action under 28

---

[14] 46 Fed. Reg. 14006 (1981).

U.S.C. 1581(i)[15] ("section 1581(i)") because that is the only available basis for action; finally, that if, as here, the Department of Commerce modifies the scope of the order, then a cause of action under section 516a arises at the time of such modification.

Both the government and intervenor argue that because the Administrator was actually included in the investigations conducted and the determinations made, because appellant was aggrieved in fact by the suspension of liquidations, and because appellant participated in the proceedings, appellant had a cause of action under section 516a. Further, both make statements indicating that section 516a is the *exclusive* means for contesting the order and that appellant's failure to file its action within the thirty-day statutory period prevented the Court of International Trade from having jurisdiction. The government also argues that the questions raised by appellant regarding the clarifying notice of February 25, 1981, were not before the lower court and should not be decided by this court for the first time on appeal. Because appellant's true aggrievement occurred upon inclusion of the Administrator within the final determinations, intervenor asserts that the later clarifying notice would not constitute a new aggrievement; that administrative tribunals have inherent power to clarify an order to make explicit that which is implied; and that even if section 516a was not the exclusive basis under which to bring a cause of action, appellant is barred by laches.

OPINION

The issue is whether, as determined by the Court of International Trade, appellant's action is, in effect, under section 516a because it is "directed at the basis of the final *determinations* and not at the final *order*." An alternative inquiry is whether appellant's action under 1581(i) is precluded because, as intervenor says: [16]

---

[15] 28 U.S.C. 1581 was enacted as part of the Customs Court Act of 1980, Pub. L. No. 96-417, 94 Stat. 1727, to clearly define the scope of jurisdiction of the Court of International Trade and to establish a comprehensive system for judicial review of disputes arising out of import transactions. It provides in part as follows:

28 U.S.C. § 1581. Civil actions against the United States and agencies and officers thereof

* * * * * * *

(i) In addition to the jurisdiction conferred upon the Court of International Trade by subsections (a)-(h) of this section and subject to the exception set forth in subsection (j) of this section, the Court of International Trade shall have exclusive jurisdiction of any civil action commenced against the United States, its agencies, or its officers, that arises out of any law of the United States providing for—

(1) revenue from imports or tonnage;

(2) tariffs, duties, fees, or other taxes on the importation of merchandise for reasons other than the raising of revenue;

(3) embargoes or other quantitative restrictions on the importation of merchandise for reasons other than the protection of the public health or safety; or

(4) administration and enforcement with respect to the matters referred to in paragraphs (1)-(3) of this subsection and subsections (a)-(h) of this section.

[16] The government's brief states that Congress "made no provision for judicial review of * * *antidumping duty orders. * * * The omission of judicial review for antidumping duty orders was clearly deliberate and not an oversight * * *"

> As the appellant noted in * * * its complaint * * * 19 U.S.C. §1516a(a)(2) * * * precludes any interested party "from contesting any matter contained in a final antidumping duty order after the expiration of thirty (30) days after the publishing of such an order." [Footnote omitted.]

In either case, an affirmative conclusion would mean that appellant is barred from contesting the order by failing to bring an action within the thirty-day statutory period provided by section 516a.

[2] Section 516a expressly permits an interested party to commence an action to contest "any factual findings or legal conclusions upon which the determination [of sales at less than fair value and material injury to a United States industry] is based"; also, it requires that any such action be commenced within thirty days after date of publication of the order in the Federal Register.

[3] Regarding the alternative inquiry, we agree with the Court of International Trade that section 516a is *not* the "*exclusive* remedy for all grievances arising from the administration of the antidumping law." A possible conflict between sections 1581(i) and 516a was foreseen by Congress and specifically addressed:

> This section [1581(i)] granted the court jurisdiction over those civil actions which arise directly out of an import transaction and involve one of the many international trade laws. The purpose of this section was to eliminate the confusion which currently exists as to the demarcation between the jurisdiction of the federal district courts and the Court of International Trade. This language made it clear that all suits of this type are properly commenced only in the Court of International Trade and not in a district court. Thus, the Committee did not intend to create any new causes of action, but merely to designate definitively the appropriate forum.
>
> * * * * * * *
>
> Subsection (i) is intended only to confer subject matter jurisdiction upon the court, and not to create any new causes of action not founded on other provisions of law.
>
> * * * * * * *
>
> As in the case of subsection (a) of proposed 1581, it is the intent of the Committee that the Court of International Trade not permit subsection (i), and in particular paragraph (4), to be utilized to circumvent the exclusive method of judicial review of those antidumping and countervailing duty determinations listed in section 516A of the Tariff Act of 1930 (19 U.S.C. §1516a), as provided in that section. Since subsection (i) merely confers jurisdiction on the court and does not create any new causes of action, H.R. 7540 does not change the rights of judicial review which exist under section 516A.
>
> The Committee intends that any determination specified in section 516A of the Tariff Act of 1930, or any preliminary administrative action which, in the course of proceeding, will be, directly or by implication, incorporated in or superceded by any

such determination, is reviewable *exclusively* as provided in section 516A. For example, a preliminary affirmative antidumping or countervailing duty determination or a decision to exclude a particular exporter from an antidumping investigation would be reviewable, if at all, only in connection with the review of the final determination by the administering authority or the ITC.

However, subsection (i), and in particular paragraph (4), makes it clear that the court is not prohibited from entertaining a civil action relating to an antidumping or countervailing duty proceeding so long as the action does not involve a challenge to a determination specified in section 516A of the Tariff Act of 1930.[17]

[Emphasis supplied.]

[4] It is apparent from this legislative history that Congress envisioned occasions when an aspect of an antidumping duty determination might fall within the court's jurisdiction under section 1581(i). [5] The Customs Regulations indicate that the contents of an antidumping duty determination are multifaceted and that the "factual findings and legal conclusions upon which the determination is based"[18] comprise only one aspect of the determination.[19] [7] Thus, unless there is an express factual finding or legal conclusion with respect to the scope of the antidumping duty order ("description of the merchandise involved"), section 516a would not preclude an action based on section 1581(i).

As to whether appellant's action is "directed at the basis of the final *determinations*," it is clear that the factual findings and legal conclusions underlying ITC's determination of material injury were, in part, specifically directed to the description of the merchandise involved. In response to appellant's arguments in its prehearing statement of April 8, 1890, and during the April 10, 1980, hearing, ITC's "Statement of Reasons" and the Chairman's "Conclusions of Law" under her "Additional Views" *expressly* stated that the Administrator was included.[20] Accordingly, any action brought by appellant to contest the inclusion of the Administrator within the description of merchandise encompassed by the anti-

---

[17] H.R. Rep. No. 96-1235, 96th Cong., 2d Sess. 33, 47, 48, *reprinted in* [1980] U.S. Code Cong. & Ad. News, 3729, 3745, 3759, 3759-60.

[18] *See* section n 516a, *supra* note 13. [6] The elements of an antidumping duty determination which are specified in section 516a and which may be contested through a section 516a action are the factual findings and legal conclusions underlying the determination. *See* 19 U.S.C. 1673d(d).

[19] 19 CFR 153.39 provides:

Content of determinations.

Whenever the Secretary makes any tentative or final determination, or issues a "Withholding of Appraisement Notice", pursuant to the provisions of this subpart, he shall include in the notice of such determination published in the Federal Register the following information:

(a) A description of the merchandise involved;

(b) The name of the country of exportation;

(c) If practicable, the name of the manufacturer(s), producer(s), or exporter(s);

(d) The date of the receipt of the information in acceptable form pursuant to the requirements of § 153.27; and

(e) A complete statement of findings and conclusions, and the reasons or bases therefor, on all the material issues of fact or law presented (consistent with requirements of confidentiality under subpart B of this part).

[20] *See* note 11 and accompanying text, *supra*.

dumping duty order had to be brought within thirty days after date of publication of the order in the Federal Register. This not having been done, we hold that appellant's action was properly dismissed.

In view of the foregoing, other issues raised by the parties need not be reached.

COSTS

One final matter remains. Appellant has moved to impose on appellee and intervenor the costs of printing six hundred sixty-eight out of nine hundred thirty-six pages of the transcript. Appellant argues that designation of these pages was unnecessary under this court's Rule 5.6(b) because "this information is on file and readily available to the Court." Certain exhibits account for five hundred forty-six pages of the contested printing; the transcript of oral argument before the Court of International Trade on December 16, 1980, accounts for the remainder. [8] In view of the complex factual background of this case, the reliance by *all* parties on many of the exhibits designated by the government and intervenor, and the aid to this court, supplied by the oral arguments before the Court of International Trade, in understanding the issues, we do not agree that the designations are unnecessary, and appellant's motion is denied. *See United States* v. *Texas Instruments, Inc.*, 64 CCPA 24, 30, C.A.D. 1178, 545 F. 2d 739, 744 (1976); *United States* v. *Parksmith Corp.*; CCPA 76, 83, C.A.D. 1149, 514 F. 2d 1052, 1057 (1975); *Sol Kahaner & Bro.* v. *United States*, 62 CCPA 35, 37, C.A.D. 1141, 509 F. 2d 1186, 1187 (1975).

AFFIRMED

MARKEY, *C.J.*, concurring.

I concur in the result and join the majority opinion, except for that portion dealing with an alternative inquiry respecting 28 USC 1581. Having affirmed the Court of International Trade's determination that the action is under section 516a, I would go no further.

Appeal No. 81-35

SUMITOMO METALS *v.* BABCOCK & WILCOX AND UNITED STATES

1. DENIAL OF INTERVENTION IN COURT OF INTERNATIONAL TRADE—TIMELINESS UNDER RULE 24(A). INTERNATIONAL TRADE COMMISSION ANTIDUMPING PROCEEDING

Denial of intervention as a matter of right as provided in 28 U.S.C. 2631(j)(1)(B) affirmed. Application is untimely under Court of International Trade Rule 24(a).

2. RULE 24(A)—RIGHTS OF INTERVENTION

Rule 24(a) embodies not one, but two rights of intervention.

3. ID. TIMELINESS OF APPLICATION TO INTERVENE

Timeliness of application to intervene must be judged from date right to intervene arose.

4. ID. STATUTORY RIGHT TO INTERVENE

Right to intervene under Rule 24(a)(1) is given by statute and arises upon institution of the proceeding in contrast to intervention of right under Rule 24(a)(2), which arises when interests are no longer adequately represented.

5. ID

Application to intervene under statutory right by person who had been aware of the pendency of the proceeding for 16 months prior to applying to intervene and after significant decisions by court is not in favorable position to be granted.

6. INTERVENTION—PREJUDICE TO PARTIES—UNUSUAL CIRCUMSTANCES

Even without satisfactory explanation for delay, court must weigh prejudice to parties and unusual circumstances in determining whether intervention under Rule 24(a)(1) should be granted.

7. ID. UNTIMELINESS

Application to intervene is untimely because of delay and prejudice to existing parties who have entered settlement agreement which does not prejudice proposed intervenor.

8. INTERESTS OF PROPOSED INTERVENOR NOT INADEQUATELY REPRESENTED

So long as the Government continues on a course directed at upholding the Commission's negative injury determinations, interests of proposed intervenor are not inadequately represented. Rule 24(a)(2) motion could not be granted.

9. ID. AFFECT ON OTHER INVESTIGATIONS

Affect on other investigations of moot order does not establish right of intervention in this proceeding.

10. RIGHTS UNDER RULE 24(A)(1) OR (2)

Loss of right under Rule 24(a)(1) because not exercised in a timely manner by *amicus curiae* does not affect any inchoate right under Rule 24(a)(2).

(F. 2d)

SUMITOMO METAL INDUSTRIES, LTD., APPELLANT *v.* BABCOCK & WILCOX CO., AND THE UNITED STATES, APPELLEES

United States Court of Customs and Patent Appeals, January 21, 1982, Appeal from United States Court of International Trade.

[Affirmed]

Charles R. Stevens, Milo G. Coerper and *Jerry L. Siegel*, of Washington, D.C. and New York, New York, attorneys for appellant.

Stephen M. Creskoff, Brian E. McGill, of Washington, D.C., attorneys for appellee Babcock & Wilcox.

J. Paul McGrath, Asst. Atty. General, *David M. Cohen*, Director, and *Francis J. Sailer*, of Washington, D.C., attorneys for appellee United States.

[Oral argument on December 2, 1981 by *Milo G. Coerper* and *Jerry L. Siegel* for appellant, *Francis J. Sailer* for appellee United States. No appearance by appellee Babcock & Wilcox.]

Before MARKEY, *Chief Judge*, RICH, BALDWIN, MILLER, and NIES, *Associate Judges*.

NIES, *Judge*.

[1] This appeal is from two orders of the United States Court of International Trade dated September 18, 1981, and October 5, 1981, denying Sumitomo Metal Industries, Ltd., (SMI) leave to intervene as a matter of right under 28 U.S.C. 2631(j)(1)(B). We affirm.

International Trade Commission Proceedings

Babcock & Wilcox Co. (B&W), a domestic producer of steel pipes and boiler tubes, filed petitions on February 28, 1980, with the Department ff Commerce (Commerce) and the International Trade Commission (Commission), alleging that certain steel pipes and tubes imported from Japan were being sold to United States importers at less than fair value by SMI and another foreign producer in contravention of the antidumping provisions of the Trade Agreements Act of 1979, Pub. L. No. 96–39, 93 Stat. 144 (1979). The particular complaint considered here is the fourth in a series of unsuccessful attempts since August 23, 1979, by B&W to secure sanctions against such imports.

The Commission determined that of the four products subject to investigation (i.e., three seamless pipe and tube products and one welded pipe and tube product), only with respect to the welded product was there a reasonable indication of material injury to the domestic industry producing a like product. With respect to the three seamless products, the Commission, by a 3–2 vote, determined that there was no reasonable indication of material injury or the threat of material injury to the domestic industry producing a like product, thus terminating that portion of the antidumping investigation. 45 Fed. Reg. 27581 (1980).[1] After receiving corrected data which revealed a decline in imports of welded products, the Commission made a negative determination with respect to welded products as well. 45 Fed. Reg. 47769 (1980).

---

[1] Investigation No. 731-TA-15 (Preliminary).

Proceedings in the Court of International Trade

On May 5, 1980, B&W commenced an action against the United States in the Customs Court (now the Court of International Trade) in accordance with 19 U.S.C. 1516a, seeking judicial review of the Commission's negative injury determination regarding the seamless products. On July 25, 1980, B&W instituted a second action seeking judicial review of the negative injury determination regarding the welded product. The two actions were consolidated as Court of International Trade Consolidated Civil Action No. 80–5–00772.

By order entered July 16, 1980, SMI was granted leave to appear as *amicus curiae* supporting the Government's position.

Following various procedural motions, B&W filed a motion in the consolidated action for "review of administrative determination upon an agency record" and the Government cross-moved for affirmance of the Commission's determinations. SMI filed briefs *amicus curiae*. These cross-motions were ruled upon in Slip Op. 81–75.[2] In an accompanying order dated August 20, 1981 [the August 20, 1981 decision and accompanying order are hereinafter referred to as "Slip Op. 81–75"], the court remanded the case to the Commission, ordering it both to open its investigation, which had treated the seamless products as a single industry, and to attempt to obtain discrete information on the three seamless product lines separately (or formally determine that such information was unavailable) in order that the court would have such findings in the record in deciding the appeal. The order also set aside the Commission's negative injury determination with respect to the importation of the welded pipe and tube product.

On September 15, 1981, SMI applied to intervene pursuant to Rule 24(a),[3] relying on the statutory right to intervene given to a person who would be adversely affected or aggrieved by a decision in an action pending in the Court of International Trade under 28 U.S.C. 2631(j)(1)(B). SMI sought intervention for the purpose of seeking rehearing of Slip Op. 81–75 in its entirety or, in the alternative, to seek appellate review thereof. At the same time SMI filed a motion for rehearing of Slip Op. 81–75,[4] apparently on the assumption that its motion to intervene would be granted pro forma. By order of September 18, 1981, SMI was denied leave to intervene. No action was specifically taken on its motion for rehearing.

---

[2] As part of this opinion the court ruled that the Commission had failed to give consideration to product-specific profit data in defining the relevant domestic industry or industries.

[3] Rule 24(a) of the Rules of the United States Court of International Trade [hereinafter "Rule 24(a)"]. Note that the language of Rule 24(a), quoted infra, is identical to Fed. R. Civ. P. 24(a). Accordingly, we may look to cases construing the Federal rule to aid us here.

[4] The Government also moved for rehearing but limited its request to modification of that portion of Slip Op. 81–75 dealing with the welded products. The Government, in its motion, specifically noted that "[by] limiting this motion for rehearing to this aspect of the Court's opinion and order we do not concede the correctness of the remainder of the Court's holdings in Slip Op. 81–75."

The motion for rehearing and modification was denied.

Thereafter, B&W and the United States filed a joint motion seeking the suspension of all judicial and administrative proceedings pending the filing of a new antidumping petition by B&W and the institution by Commerce of a new antidumping investigation covering steel pipe and tube products from Japan.

Attached to the joint motion was a stipulation between B&W and the United States pursuant to which inter alia, the parties agreed to a dismissal of the pending proceedings before the Court of International Trade upon the institution of a new antidumping investigation by Commerce. In addition, B&W and the United States stipulated that upon the Court of International Trade's dismissal of Consolidated Civil Action No. 80–5–00772 (assuming a new proceeding is instituted by Commerce), they will jointly move the Court of International Trade for an order vacating Slip Op. 81–75.

Upon learning of the joint motion, on October 1, 1981, SMI filed a motion for reconsideration of the order denying intervention. As added grounds, SMI asserted it wished to oppose the joint motion. SMI's motion was denied October 5, 1981.[5] The joint motion was granted October 7, 1981, on condition that within 90 days B&W file a new petition acceptable to Commerce.

SMI appeals the lower court's denial of intervention.[6] Without the status of an intervenor, SMI is unable to seek rehearing by the court below of Slip Op. 81–75 and the order granting the joint motion and/or appellate review by this court of these orders.

On October 27, 1981, this court stayed the order in Slip Op. 81–75 and the order granting the joint motion pending this appeal. In view of our holding, these stays are lifted.

The Decision of the Court of International Trade Denying Intervention

The Court of International Trade denied SMI leave to intervene on two grounds. First, the court viewed the language of 28 USC 2631(j)(1)(B)[7] as allowing intervention only if SMI had applied "*before* the court's decision [in Slip Op. 81–75] was rendered." [Emphasis in original.] The court, thus, held that SMI's application for

[5] The order of Oct. 5, 1981, specifically denies the motion by SMI for rehearing of Slip Op. 81–75, and also generally denies SMI's motions for "other relief." The parties have treated the then-pending motion for reconsideration on the matter of intervention as denied by this order.

[6] SMI filed a notice of appeal on September 25, 1982, for review of the denial of intervention. Thereafter, on October 13, 1981, SMI filed an amended notice of appeal to include the denial of its motion for reconsideration thereof.

[7] The pertinent portion of 28 USC 2631(j)(1)(B) reads:

> (j)(1) Any person who *would be adversely affected or aggrieved* by a decision in a civil action pending in the Court of International Trade may, by leave of court, intervene in such action, except that–
>
> * * * * * * * *
>
> (B) in a civil action under section 516A of the Tariff Act of 1930 [19 USC § 1516a], only an interested party who was a party to the proceeding in connection with which the matter arose may intervene, and such person may intervene as a matter of right; [Emphasis added.]

No challenge is made to SMI's status as an interested party as defined therein. SMI was named in B&W's antidumping petition and participated in the Commission proceedings.

intervention was untimely as it was filed more than 16 months after the proceedings began, and after Slip Op. 81–75 was rendered. Second, the court below held that SMI "waived any right it would otherwise have had to intervene" by participating in the capacity of *amicus curiae*.

OPINION

On appeal SMI maintains that, given a statutory right to intervene, that right may be exercised whenever its interests are no longer adequately represented by a party to the litigation.[8] This position must fail. SMI is not measuring timeliness based on the statutory right from the proper point of reference—SMI seeks to eliminate a time gap rather than to justify it. In any event, we do not agree that its interests are no longer adequately represented. *See* n. 17, infra.

Two Rights, Not One

Rule 24(a) provides:

> (a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the dispostion of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

[2] It is apparent that Rule 24(a) embodies not one, but two rights of intervention. Rule 24(a)(1) deals with an express statutory right, an unconditional right to intervene. Rule 24(a)(2) deals with a right to intervene, not expressly provided by statute, but nevertheless, intervention as of right rather than as a permissive matter, the latter covered by Rule 24(b). Different considerations flow not only from Rule 24(a) and Rule 24(b) but also from the different provisions within Rule 24(a).

Thus, where a proposed intervenor contends that intervention is of right under a particular part of Rule 24(a), courts have been careful to note that intervention as of right under another part of Rule 24(a) is not asserted. *See*, e.g., *Cascade Natural Gas Corp.* v. *El Paso Natural Gas Co.*, 386 U.S. 129, 144 (1967) (Stewart, J., dissenting); *Illinois* v. *Outboard Marine Corp.*, 619 F. 2d 623, 630–32 (CA 7 1980), *vacated on other grounds*, —— U.S. ——, 49 U.S.L.W. 3978 (July 2, 1981) (No. 80–126); *Mir* v. *Smith*, 521 F. Supp. 446, 448 (N.D. Ga. 1981).

[8] As a preliminary matter, we note that an appeal will lie from a denial of an application to intervene as of right. *See*, e.g., *Cascade National Gas Corp.* v. *El Paso National Gas Co.*, 386 U.S. 129 (1967); *Petrol Stops Northwest* v. *Continental Oil Co.*, 647 F. 2d 1005, 1009 (CA 9 1981); *Reedsburg Bank* v. *Apollo*, 508 F. 2d 995, 997 (CA 7 1975).

So far as we are aware, this case is one of first impression. We have not been cited to, nor have we found, any case ruling on whether a motion to intervene under Rule 24(a)(1) was untimely.

Timeliness Factors

The question of timeliness is largely committed to the discretion of the trial court and will not be overturned unless it can be shown that that discretion was abused. *NAACP* v. *New York*, 413 U.S. 345, 366 (1973). In passing upon the timeliness of applications, the following factors must be weighed:[9]

> (1) the length of time during which the would-be intervenor actually knew or reasonably should have known of his right to intervene in the case before he applied to intervene;[10]
>
> (2) whether the prejudice to the rights of existing parties be allowing intervention outweighs the prejudice to the would-eb intervenor by denying intervention.[11]
>
> (3) existence of unusual circumstances militating either for or against a determination that the application is timely.[12]

The Time Trigger

[3] In order to determine whether an application for intervention is timely, consideration must first be given to when the right to intervene actually arose. Timeliness must be judged from that date. It is this initial determination that differs markedly between Rule 24(a)(1) and Rule 24(a)(2).

[4] Under Rule 24(a)(1), a person's right to intervene arises upon institution of the proceeding. Under Rule 24(a)(2), the right arises when at least a minimal showing can be made that a person's interest is no longer being adequately represented. *Trbovich* v. *UMW*, 404 U.S. 528, 538 n.10 (1972); *United States* v. *Marion County School District*, 590 F. 2d 146, 148 (CA 5 1979).[13]

Accordingly, the timeliness of a motion to intervene must be judged from different times in the course of a proceeding, depending on whether the right of intervention is asserted under Rule 24(a)(1) or Rule 24(a)(2).

SMI asks us to measure timeliness in connection with its statutory right under 28 U.S.C. 2631(j)(1)(B) from the time the Government

---

[9] *See Stallworth* v. *Monsanto Co.*, 558 F. 2d 257, 263–°6 (CA 5 1977); *See also* Note, *The Timeliness Threat to Intervention of Right*, 89 Yale L.J. 586, 593–94, n. 40 (1980).

[10] *Piambino* v. *Bailey*, 610 F. 2d 1306, 1320 (CA 5), *cert. denied*, 449 U.S. 1011 (1980); *Alaniz* v. *Tillie Lewis Foods*, 572 F .2d 657 (CA 9) (per curiam), *cert. denied*, 439 U.S. 837 (1978).

[11] *Stallworth* v. *Monsanto Co.*, supra at 265–66; *Piambino* v. *Bailey*, supra at 1320–21; *McDonald* v. *E.J. Lavino Co.*, 430 F. 2d 1065, 1072 (CA 5 1970); *Usery* v. *Brandel*, 87 F.R.D. 670, 674–75 (W.D. Mich. 1980).

[12] *Piambino* v. *Bailey*, supra.

[13] *See also*, *Piambino* v. *Bailey*, supra.

allegedly no longer adequately represented its interests. As indicated, under Rule 24(a)(2) that is the trigger which activates the time clock. However, SMI's statutory right to intervene has been present since proceedings were instituted. Thus, in considering the timeliness of SMI's motion under Rule 24(a)(1), the inquiry must focus on when SMI became aware or should have been aware of the *proceeding*.

In court proceedings involving review of antidumping petitions, the complainant (here B&W) is required by law to notify all "interested parties" (here SMI, inter alia) of the filing of the action. 19 U.S.C. 1516a(d). SMI does not dispute that it has been aware of the pendency of the proceeding below since its inception in May 1980.[14]

SMI's motion to intervene was filed on September 15, 1981, more than 16 months after its right to intervene arose and was known. What prompted SMI to take action was not Slip Op. 81–75 itself but the decision by the Government not to ask rehearing on Slip Op. 81–75 in its entirety. Slip Op. 81–75 did not terminate the case. It was interlocutory. Had SMI promptly exercised its statutory right, it would have been entitled to control such strategic decisions as requesting rehearing and attempting to appeal an interlocutory decision. We do not accept the proposition that a statutory right allows a potential party to sit by and, in the event of a choice of procedural tactics by the laboring party not to its liking, force the court to reconsider matters otherwise settled. Such a right may not be exercised in a fashion which encompasses "Heads I win, tails you lose" tactics.[15] We also do not agree with SMI that the courts should be particularly lenient in considering the timeliness of a request to intervene based on a statute. On the contrary, the quid pro quo for this right being unconditional is that it must be exercised promptly.

[5] An application to intervene by statutory right filed 16 months into a proceeding and after significant decisions have been rendered by the court is not in a favorable posture to be granted. [6] However, even without any explanation for the delay, we would have to weigh the prejudice to the parties and consider any unusual circumstances which might lead to the conclusion that the motion for intervention must be granted.

The Prejudice Factor

Where intervention as of right is raised, there is usually a greater risk of harm to the would-be intervenor than in permissive inter-

[14] In any event, SMI's participation as *amicus* since July 1980 leaves no doubt that SMI was well aware of the activity in the Court of International Trade at an early stage.

[15] Some courts have referred to this tactic as the "free ride theory." Intervention during a proceeding must, however, be contrasted with the right to intervene under Rule 24(a)(2) if an adverse decision is not appealed by the parties. *Compare McDonald* v. *E. J. Lavino*, supra, *with Legal Aid Society* v. *Dunlop*, 618 F. 2d 48 (CA 9 1980).

vention situations under Rule 24(b). Thus, trial inconvenience itself is not sufficient reason to reject as untimely an application to intervene as of right.[16] On the other hand, prejudice to existing parties to the litigation is "perhaps the most important factor in determining timeliness of [an application] to intervene as of right." *Petrol Stops Northwest* v. *Continental Oil Co.*, 647 F. 2d 1005, 1010 (CA 9 1981). *Accord*, *McDonald* v. *E. J. Lavino*, supra. Accordingly, the prejudice which existing parties to the litigation may suffer as a result of the would-be intervenor's failure to intervene when the right to intervene arose must be balanced against the prejudice the would-be intervenor may suffer if intervention is denied.

SMI asserts that it will be prejudiced by (a) foreclosure of any opportunity for appellate review of Slip Op. 81–75 reversing the Commission's ruling in favor of SMI because of the joint motion, (b) a continuing detrimental impact upon SMI's ability to conduct its domestic business operations and to price accurately and to sell its products in the United States during the course of proceedings, and (c) the burdensome expense and effort of defending against another B&W petition.

Concerning the first, SMI's argument is that it is more advantageous to its interests to have Slip Op. 81–75 reversed on appeal than mooted. With respect to its effect on the existing proceeding, we cannot agree. [7] The termination of the appeal which leaves the negative injury determination by the Commission intact does not prejudice SMI. Moreover, in the event the settlement is not effected, Slip Op. 81–75 will ultimately be reviewable by this court as part of these proceedings. The Government has declared, and SMI concedes, that the Government did not not waive any right to appeal Slip Op. 81–75 and, indeed, reserved that right pending a final disposition of the case by the court below.[17]

SMI's further assertion, that Slip Op. 81–75 after being vacated will, nevertheless, influence the Commission in its determinations in other cases, may be correct. [9] We do not agree that an effect on other investigations establishes a right of intervention under the statute in this proceeding. As far as this proceeding is concerned, the matter will become moot.

The second and third factors alleged as prejudice, namely, the uncertainly in pricing its products and the possibility of having to defend against another B&W petition, can be answered readily.

---

[16] *See McDonald* v. *E. J. Lavino*, supra at 1073, and authorities cited therein.

[17] SMI is correct that the Government did not seek to take an interlocutory appeal of Slip Op. 81–75 as SMI would propose to request. The Government waived no ultimate rights in failing to take this action, and we see this as a matter of trial strategy rather than prejudice or failure to adequately represent SMI's interest. [8] Moreover, so long as the Government continues on a course directed at upholding the Commission's negative injury determinations, we do not agree with SMI that its interests are inadequately represented. Accordingly, if SMI's motion were to be considered one under Rule 24 (a)(2), it could not be granted.

Dumping proceedings in no way inhibit fair marketing practices. With respect to other petitions, it is sufficient answer that any U.S. industry has a statutory right to file an antidumping petition at any time. 19 U.S.C. 1673a(b). That SMI must accept uncertainly results from the statute protecting U.S. industry, not from the decision below

The prejudice to the existing parties to the litigation is obvious. If SMI is allowed to intervene, the probability of getting its consent to possible settlement appears highly unlikely and the agreement worked out between the parties would, in any event, have to be set aside. Accordingly, the prejudice factor weighs in favor of the denial of intervention.

Unusual Circumstances Factor

Considering the time during which SMI chose not to intervene, and the prejudice to existing parties were SMI permitted to do so, we conclude that SMI was properly denied intervention absent some unusual circumstances compelling a contrary ruling.

SMI raises as a special circumstance that, by virtue of the joint motion and the denial of its request to intervene, the Court of International Trade will be permitted "to insulate its decisions and actions from appellate review by this Court." Should the case continue and the Government choose not to appeal an adverse decision, we do not read the court's decision as foreclosing intervention pursuant to Rule 24(a)(2) under such circumstances. While the court ruled that SMI's participation as *amicus curiae* "waived any right it would otherwise *have had* to intervene in the action" (emphasis added), the order clearly applies to rights SMI had at the time of the ruling, not to all future rights to intervene that may arise. [**10**] Although SMI has lost its rights under Rule 24(a)(1) because it did not exercise that right in a timely manner, SMI has not lost any inchoate right under Rule 24(a)(2).[18]

CONCLUSION

In view of the foregoing, we conclude that the court below did not abuse its discretion in denying SMI's motion to intervene as untimely. Accordingly, the decision of the Court of International Trade is *affirmed.*

[18] In view of our affirmance on the ground of untimeliness, we do not find it necessary to consider the issue of waiver of rights because of participation as *amicus curiae*. We do note that unsuccessful intervenors are frequently relegated to the status of *amicus curiae* by the court. *See*, e.g., *Durkin* v. *Pet Milk Co.*, 14 F.R.D. 374, 381 (W.D. Ark. 1953). Holding that participation as *amicus* waives all rights of intervention would eliminate such flexibility in procedure. Thus where a party participated as *amicus* in the district court, he was, nevertheless, permitted to intervene in the circuit court. *See SCM Corp.* v. *USITC*, 404 F. Supp. 124 (D.D.C. 1975), *rev'd on other grounds*, 549 F. 2d 812 (CA D.C. 1977) (review of Commission Proceedings). In any event, every motion to intervene must be judged as of the time it is made.

United States Court of International Trade

Decisions of the United States Court of International Trade

(Slip Op. 82–6)

ERSTINE CLARK MCAFEE D.B.A. E. C. MCAFEE CUSTOMS BROKER, A SOLE PROPRIETORSHIP, PLAINTIFF *v.* UNITED STATES, SECRETARY OF THE TREASURY, COMMISSIONER OF CUSTOMS, REGIONAL COMMISSIONER OF CUSTOMS FOR THE BOSTON REGION, DISTRICT DIRECTOR AT BUFFALO, ET AL., DEFENDANTS

Court No. 81–12–01729

Before BOE, *Judge.*

Memorandum Opinion and Order on Plaintiff's Application for a Preliminary Injunction

[Plaintiff's motion for preliminary injunction granted.]

(Dated January 13, 1982)

Richard A. Kulics, attorney for plaintiff.
J. Paul McGrath, Assistant Attorney General; *Joseph I. Liebman*, Attorney in Charge, International Trade Field Office, Commercial Litigation Branch, by *Robert H. White*, for the defendants.

BOE, *Judge:* An Order to Show Cause in the above-entitled action was issued by the Honorable Morgan Ford, Judge, on the 17th day of December 1981 directing the defendants therein to appear before this court to show cause "why a preliminary injunction should not be issued prohibiting the denial of immediate delivery privileges" to the plaintiff herein. Pursuant to a consent motion, approved by the court, this proceeding was brought on for hearing before the undersigned on January 6, 1982.

From the record before the court and the testimony adduced, the following facts have been established.

The plaintiff, a licensed customs broker engaged in business at Buffalo, New York during the time in question, served as a broker for International Citrus of Canada, Inc. The latter company shipped for through the plaintiff at the port of Buffalo orange juice which previously had been imported from the United States and which merchandise, while in Canada, had only been "packaged" for its return to the United States. Pursuant to a determination made by the Customs Service, the merchandise in question was accorded a duty-free status upon its re-entry into the United States.

Customs Regulations pertaining specifically to the borders between the United States and Mexico and Canada provide that a special entry permit may be issued permitting the immediate release of merchandise passing through the respective border ports of entry between the hours of 5:00 p.m. and 8:00 a.m., during which time the Customs House is closed, in order to avoid unusual loss or inconvenience to the importer or carrier. The plaintiff possessed a special entry permit and in compliance with the order of Customs had posted a $100,000 general term bond with an approved corporate surety.

In those instances where the client of a broker did not possess his own bond under which an entry of merchandise could be made, a broker frequently entered merchandise under the broker's bond as the "importer of record." This procedure was followed by the plaintiff with respect to the entries of merchandise made in behalf of International Citrus of Canada, Inc.

As aforenoted, pursuant to a determination made by Customs, the merchandise in question was entered free of duty until July 1980 at

which time it appears that the plaintiff was advised by Customs that the merchandise might not qualify for duty-free status because a drawback might have been claimed on the merchandise by the United States exporter. Upon receiving notice of the determination by Customs to rescind the duty-free status of the packaged orange juice, the plaintiff sought to file in July of 1980 with Customs a "Declaration of Owner," identifying International Citrus of Canada, Inc. as the actual owner, together with its superseding bond. The latter instruments were not accepted by Customs. As a result of the determination of Customs to rescind the duty-free status of the merchandise in question, 27 entries which had been made between May 1, 1980 and July 15, 1980 became subject to duty or additional duty and were subsequently liquidated on June 5, 1981 in a total amount of $52,447.52.

On June 10, 1981, predicating its request upon the provisions of 19 U.S.C. § 1520(c), the plaintiff sought to correct the entry papers previously filed with respect to the merchandise in question at the time of their respective entries into the United States in order to show International Citrus of Canada, Inc. as the actual owner. This request was denied on June 12, 1981 by Customs.

Plaintiff filed on July 18, 1981, its protest to the liquidation of the merchandise in question as well as to the refusal of Customs to permit a correction of the designation of the actual owner. The protest was denied by Customs on November 20, 1981.

A directive was made by the Regional Commissioner of the Customs Service under date of October 30, 1981 to suspend the immediate delivery privileges of the plaintiff. A verbal recision of this written directive delayed implementation thereof until a futher suspension directive was made by letter under date of December 15, 1981. It is to the implementation of this suspension of plaintiff's immediate delivery privileges that the Temporary Restraining Order issued by this court under date of December 17, 1981 has been directed and concerning which a preliminary injunction is now sought by the plaintiff in this proceeding.

The foregoing statement of facts purposely has been detailed to illustrate the substantial questions going to the merits of the above-entitled action, which necessarily require a determination more thorough and intensive than permitted in the present proceeding. Whether the plaintiff should have been permitted by Customs to file the "Declaration of Owner" in behalf of its client, International Citrus of Canada, Inc., together with the company's superseding bond and whether, pursuant to the provisions of 19 U.S.C. § 1520(c), the plaintiff should have been permitted to correct the entry papers originally filed by him to indicate the actual owner, are questions

which have not been addressed by the parties in the instant proceedings and await resolution at a trial on the merits.

The plaintiff has protested the imposition of duty on 27 entries which previously, with the approval of Customs, had been entered duty free. From the record and the evidence presented, it appears that the duties imposed in 1980 on the 27 entries were premised on a supposition that a drawback might have been claimed by the exporter of the orange juice in the United States. At the hearing in this proceeding and upon direct inquiry by the court, witnesses of the Government, representing the Regional Commissioner of Customs, Region 1, were unable to state whether any drawback, in fact, has ever been paid to the United States exporter. No effort was made by the Government to confirm the payment of any drawback, a fact upon which the validity of the duties imposed are necessarily predicated. The materiality of such evidence is apparent. If the protested duties assessed on the merchandise in question are determined to be invalid, it concurrently follows that the sanction of suspension imposed by Customs on the plaintiff for his failure to pay the cumulative duties would constitute an improper and arbitrary act.

The standard of "likelihood of success," one of the requisites for the issuance of the preliminary injunction, indeed, can become so mathematically formularized and circumscribed by the time frame during which evidence is presented as to grossly hinder the court in the making of its determination as to the need for equitable relief as well as the respective parties. Circuit Judge Leventhal, speaking for the U.S. Court of Appeals, District of Columbia Circuit, in the case of *Washington Metropolitan Area Transit Commission* v. *Holiday Tours, Inc.*, 559 F. 2d 841, 844 (D.C. Cir. 1977), has placed the application of this standard for the issuance of a preliminary injunction in a clear perspective:

> Our holding is generally in accord with the movement in other courts away from a standard incorporating a wooden "probability" requirement and toward an analysis under which the necessary showing on the merits is governed by the balance of equities as revealed through an examination of the other three factors. In a leading case, Judge Frank, speaking for the Second Circuit, stated:
>
> > To justify a temporary injunction it is not necessary that the plaintiff's right to a final decision, after a trial, be absolutely certain, wholly without doubt; if the other elements are present (i.e., the balance of hardships tips decidedly toward plaintiff), it will ordinarily be enough that the plaintiff has raised questions going to the merits so serious, substantial, difficult and doubtful, as to make them a fair ground for litigation and thus for more deliberative investigation.
>
> *Hamilton Watch Co.* v. *Benrus Watch Co.*, 206 F. 2d 738, 740 (2d Cir. 1953) (footnote omitted).

This court finds from the record and testimony in the instant proceedings that as stated in *Hamilton Watch Co.*, *supra*, plaintiff has raised questions going to the merits which are so serious and doubtful, "as to make them a fair ground for litigation and thus for more deliberative investigation."

Attention of the court, accordingly, turns to the threat of immediate irreparable injury that will result to the plaintiff in the event of denial of the injunctive relief sought herein.

Mr. Merlin J. Donnelly, witness for the Government and a representative of the Regional Commissioner of Customs, Region 1, acknowledged that the suspension of the immediate delivery privilege is a severe sanction. Testimony of the plaintiff, E. C. McAfee, uncontroverted by any competent evidence, asserted that the suspension of the immediate delivery privileges would cause the plaintiff to go out of business. Further testimony revealed that every effort had been made to withhold information from plaintiff's clients as to the efforts of Customs to impose the intended sanction in order to prevent these clients from immediately transferring their business to other brokers. In this connection the evidence clearly reflects that the brokerage business is highly competitive; that even at this point in time other brokers had endeavored to solicit the business of plaintiff's clients.

It is difficult for this court to envision any irreparable damage to a plaintiff and his business more deserving of equitable relief than the very loss of the business itself.

This court, indeed, recognizes that in granting injunctive relief the injury to the public interest must be fully considered. In the instant proceeding, however, balancing the injury or harm resulting to the plaintiff as against the injury resulting to the public interest, the court is satisfied that the latter is outweighed by the former.

The duties alleged by Customs to be due and owing by the plaintiff is secured by a surety bond equal to almost twice the amount of the assessed cumulative duties on the merchandise in question. A demand for payment from the surety has been made by Customs. Although payment by the surety has not yet been made, it is acknowledged that the time for its response has not expired as of this date. Except for the time and effort that might be expended, the court fails to discern wherein any material injury has resulted to the public interest or will result thereto by virtue of the issuance of the preliminary injunctive relief sought by the plaintiff in this proceeding.

Now therefore, good cause appearing, it is hereby accordingly

ORDERED that during the pendency of the above-entitled action, the Secretary of the Treasury, the Commissioner of Customs, the Regional Commissioner of Customs of the Boston Region, the District Director at Buffalo, New York and their servants, agents and assigns

are hereby enjoined from denying immediate delivery privileges to the plaintiff and from requiring his deposit of estimated duties prior to the release of plaintiff's merchandise from Customs custody and it is further

ORDERED that the defendants are enjoined from taking any action in any manner related to the suspension of immediate delivery privileges against the plaintiff or against third party clients of the plaintiff unless approved by the court, and it is further

ORDERED that during the continuation of the preliminary injunction herein granted, the plaintiff shall forthwith and as a condition to the granting of the preliminary injunction herein, file with this court a bond with sufficient surety in the sum of $10,000 as security for the payment of costs and damages as may be incurred by any party who has been found to be wrongfully enjoined.

(Slip Op. 82–7)

INDUSTRIAL FASTENERS GROUP, AMERICAN IMPORTERS ASSOCIATION, PLAINTIFF, *v.* THE UNITED STATES, ET AL., DEFENDANTS

(Court No. 80–7–01157)

Before BOE, *Judge.*

Opinion and Order

[Remanded for proceedings consistent with this opinion and order.]

(Dated January 15, 1982)

Barnes, Richardson & Colburn; Andrew P. Vance and *Michael A. Johnson*, for the plaintiff.

J. Paul McGrath, Assistant Attorney General; *David M. Cohen*, Director, Commercial Litigation Branch; *Velta A. Melnbrencis*, for the defendants.

BOE, *Judge:* On October 29, 1981, this court issued an Opinion and Order in the above-entitled action, affirming the final determination by the International Trade Administration (ITA) that a subsidy had been paid to the exporters of certain industrial fasteners manufactured in India in the amount of 17.5% of the f.o.b. value of the merchandise, pursuant to the Indian Government's Cash Compensatory Support on Export program. The within action, however, was remanded,

> to enable the ITA to provide a more explanatory basis on which the packing credit loan and the income tax deduction [for export market development] subsidies [in the amounts of 0.4% and 0.1% of the f.o.b. value of the exported merchandise, respectively] have been determined.

The ITA, under date of December 16, 1981, filed with this court a "Statement of International Trade Administration in Compliance With Remand Order" setting forth the reasons for the determinations with respect to the packing credit loans and the special tax deductions for export market development. It is on the basis of this supplemental statement, the administrative record, and all other papers filed herein, that the court reviews the ITA determinations that had been remanded.

The Government of India (GOI), through the Reserve Bank of India, underwrites pre-shipment packing credit loans that are extended to the exporters of certain industrial fasteners at preferential interest rates for the first 90 days of the loan, by paying directly to lending banks an interest subsidy of 1.5% per annum for a period up to 90 days. Moreover, lending banks are prohibited from charging interest on packing credit loans to exporters above the preferential interest rates for the first 90 days. AR. 108. Industrial fastener firms interviewed in India by the ITA "generally reported the use" of packing credit loans on export sales (Verification Report at AR. 435). The exporters usually extend the loans for more than 90 days. AR. 76–77. See also Verification Report at AR. 435–36. Based upon the information stated above, the ITA calculated the amount of the packing credit loan subsidy to exporters of certain industrial fasteners as 1.5% interest per annum on the f.o.b. value of the exported merchandise paid for a 90-day period, approximating 0.4% of the f.o.b. value. However, the House Ways and Means Committee stated in its Report on the Trade Agreements Act of 1979,

> [T]he Committee intends that the [Administering] Authority will determine the amount of a gross subsidy by determining the value of the subsidy bestowed or otherwise made available,[1] to the extent such a subsidy *is actually used*. For example, if a firm were given a tax deduction for moving to a disadvantaged area, the value of the subsidy is the tax deduction available. However, amounts of the tax deduction not actually used would not be included in the gross subsidy amount. [Emphasis added.]

H.R. Rep. No. 317, 96th Cong., 1st Sess. at 74; *See also* S. Rep. No. 249, 96th Cong., 1st Sess. at 85. There is no substantiation either from the final determination itself or the supplemental statement of reasons presented herein that the ITA determined or attempted to

---

[1] The GOI stated in response to an ITA questionnaire that the amount of the packing credit loan that is available to exporters is limited to 85% of the value of the exported merchandise. This same limitation is noted in the Verification Report (AR. 435). In its supplemental statement, the ITA admitted that it had not taken the 85% limitation into account in its final determination, but stated that, if it had considered this fact, the amount of the packing credit loan subsidy would approximate 0.3% of the f.o.b. value of the exported merchandise.

determine the extent to which the packing credit loan is *actually used.*[2] A quantification of the extent to which the packing credit loan is *actually used*, contained in the Verification Report, was limited to the reports of only two exporting firms. One of the firms contacted in India reported that due to credit limitations it had only borrowed 20% of its export value; another firm presented documentation indicating loans of 80% of the value of exports with packing credit interest at preferential rates. AR. 436–37. One of the firms which had been contacted in India by the verification official reported in a document, apparently provided to the verification official, that it utilized 75% of the f.o.b. value against the packing credit. AR. 494.

19 U.S.C.A. § 1677e provides the general rule that:

> [T]he administering authority shall verify all information relied upon in making a final determination in an investigation. In publishing such a determination, the administering authority shall report the methods and procedures used to verify such information. If the administering authority is unable to verify the accuracy of the information submitted, it shall use the best information available to it as the basis for its determination, which may include the information submitted in support of the petition.

This court is unable to find that the final determination with respect to packing credit loans is supported by substantial evidence or otherwise in accordance with law for the following reasons:

> (1) Nothing in the final determination or in the supplemental statement of reasons presented herein provides substantiation that the ITA made a determination as to the extent the packing credit loan is *actually used.*
>
> (2) The calculations of the ITA in its supplemental statement of reasons are at great variance with the quantification of the extent the loans are actually used as reported during the verification process.

In its final determination the ITA describes the special tax deduction in question and states the basis on which it has predicated its determination that the tax deduction amounts to a subsidy:

> The Export Markets Development Allowance provides for a tax deduction of 133% of certain specific expenses. . . . The claims made by the manufacturers for this special deduction normally exceed the amount eventually allowed for deductio- by the tax authorities. Final settlement of the tax returns norn mally takes 2 to 3 years.

---

[2] The ITA states in its supplemental statement of reasons that:

> [t]he calculator tapes which reflected the actual quantification of the benefits received by the exporters under the programs for packing credit loans and income tax deductions were misplaced inadvertently. The case handler has searched her office and files for these tapes but has not been able to locate them.

An admission as to the inadvertence on the part of the ITA resulting in the loss of papers utilized in making its determination cannot be considered credible evidence that such quantifications were made by the ITA.

> Since the expenses allowed under the special deduction would normally be deductible in full, the benefit to the manufacturers would be 33 percent of the allowed amount applied to the corporate tax rate. On this basis, we have determined that exporters of fasteners receive a subsidy under this program in the amount of 0.1% of the f.o.b. value of the exported merchandise.

(AR. 732b). The court finds no error in the conclusion of the ITA that the benefit to the exporters would be 33% of the allowed amount applied to the corporate tax rate. However, the calculation of the benefits under this program, reconstructed in the supplemental statement of reasons, does not reflect this formula. The ITA appears to have utilized the figures for the amount of tax benefits *claimed* by five exporters of industrial fasteners, as opposed to the tax benefits *allowed*.[3]

The court cannot sustain the ITA's determination based upon figures representing tax benefits *claimed*. As stated above in reference to packing credit loans, in order to determine that the amount of the subsidy, the ITA must find a subsidy not only available but *actually used*. As stated by the ITA in its final determination, the finalization of a claim takes 2 to 3 years and normally the claim exceeds the amount eventually allowed. Figures for individual exporters provided in the Verification Report demonstrate that the tax benefit allowance may only be a small percentage of the amount claimed. AR. 438. The court concludes that tax benefit claims not yet finalized are so indefinite as to not constitute a subsidy *available* and *actually used*. The determination, therefore, cannot be sustained on the basis of the applicable standard of review.

Now therefore, it is hereby

ORDERED that the within action, accordingly, is remanded to the administering authority to redetermine, consistent with the foregoing opinion of this court, the amount of subsidies, if any, provided by packing credit loans and the special income tax deductions. Such a redetermination shall be returned to the court within a period of 20 days from the date of entry of this order.

---

[3] One notable exception is the tax figures for Auto & General, an exporter, wherein the ITA utilized the figure representing a *1976–77* claim for 133% of the amount of certain expenses incurred, rather than the 33% of the allowed amount applied to the corporate tax rate as formularized in the final determination. The ITA then proceeded to determine the percentage of the f.o.b. value of this "benefit" by using the f.o.b. value of exports for *1979–80*.

Decisions of the United States Court of International Trade

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *January 18, 1982.*

The following abstracts of decisions of the United States Court of International Trade at New York are published for the information and guidance of officers of the Customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to Customs officials in easily locating cases and tracing important facts.

WILLIAM VON RAAB,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P82/1	Ford, J. January 13, 1982	Chip-N-Saw, Inc.	79-4-00662	Item 674.53 7%	Item 652.18 6%	Agreed statement of facts	Seattle Chains used for transmission of power

Decisions of the United States Court of International Trade

Abstracts

Abstracted Reappraisement Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R82/1	Re, C.J. January 13, 1982	C. J. Tower & Sons of Buffalo, Inc.	R69/490	Cost of production	As set forth in decision and judgment in column designated "Total Cost of Production of Basic Automobiles" at amounts in Canadian currency, including value of U.S. components as appraised; value of optional equipment on each automobile in Canadian currency is value found by appraising official as reflected on invoices	U.S. v. C. J. Tower & Sons of Buffalo, Inc. (C.A.D. 1079)	Buffalo Studebaker automobiles and optional equipment

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R82/2	Re, C.J. January 13, 1982	C. J. Tower & Sons of Buffalo, Inc.	R69/492	Cost of production	As set forth in decision and judgment in column designated "Total Cost of Production of Basic Automobiles" at amounts in Canadian currency, including value of U.S. components as appraised; value of optional equipment on each automobile in Canadian currency is value found by appraising official as reflected on invoices	U.S. v. C. J. Tower & Sons of Buffalo, Inc. (C.A.D. 1079)	Buffalo Studebaker automobiles and optional equipment
R82/3	Re, C.J. January 13, 1982	C. J. Tower & Sons of Buffalo, Inc.	R69/495	Cost of production	As set forth in decision and judgment in column designated "Total Cost of Production of Basic Automobiles" at amounts in Canadian currency, including value of U.S. components as appraised; value of optional equipment on each automobile in Canadian currency is value found by appraising official as reflected on invoices	U.S. v. C. J. Tower & Sons of Buffalo, Inc. (C.A.D. 1079)	Buffalo Studebaker automobiles and optional equipment

R82/4	Re, C.J. January 13, 1982	C. J. Tower & Sons of Buffalo, Inc.	R69/522	Cost of production	As set forth in decision and judgment in column designated "Total Cost of Production" at amounts in Canadian currency, including value of U.S. components as appraised; value of optional equipment on each automobile in Canadian currency is value found by appraising official as reflected on invoices	U.S. v. C. J. Tower & Sons of Buffalo, Inc. (C.A.D. 1079)	Buffalo Studebaker automobiles and optional equipment
R82/5	Re, C.J. January 13, 1982	C. J. Tower & Sons of Buffalo, Inc.	R69/527	Cost of production	As set forth in decision and judgment in column designated "Total Cost of Production" at amounts in Canadian currency, including value of U.S. components as appraised; value of optional equipment on each automobile in Canadian currency is value found by appraising official as reflected on invoices	U.S. v. C. J. Tower & Sons of Buffalo, Inc. (C.A.D. 1079)	Buffalo Studebaker automobiles and optional equipment

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R82/6	Re, C.J. January 13, 1982	Waters Shipping Co. et al.	R61/23293, etc.	Export value	Net appraised values less 7¼% thereof, net, packed	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Wilmington, N.C. Plywood
R82/7	Watson, J. January 13, 1982	Kanematsu New York Inc.	R63/1283, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Sewing machine heads
R82/8	Watson, J. January 13, 1982	Trans World Shipping Corp., a/c Trans World Industries Inc.	R64/15102, etc.	Export value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	New York Sewing machine heads
R82/9	Watson, J. January 13, 1982	Trans World Shipping Corp., Kaufman & Vinson Co., a/c Trans World Ind. Corp.	R66/2009, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Sewing machine heads

Judgment of the United States Court of International Trade in Appealed Case

JANUARY 14, 1982

Appeal 80–41.—CARLINGSWITCH, INC. *v.* UNITED STATES.—Switches, Indicator Lights and Related Products—Penalty Case—Refusal to Refund Duties—Exaction—Dismissal for Lack of Jurisdiction—Summary Judgment.—C.D. 4873 affirmed June 18, 1981 (C.A.D. 1264).

Appeal to U.S. Court of Customs and Patent Appeals

Appeal 81-35—SUMITOMO METAL INDUSTRIES, LTD. *v.* BABCOCK & WILCOX CO. AND THE UNITED STATES—Negative Preliminary Determination—Factual Findings—Legal Conclusions and Procedural Orders—Fair Value Sales—Welded Steel Pipe and Tube—TSUS—Appeal from decision and judgment in Slip Op. 81-33.

In this case, the International Trade Commission made a negative determination, under Section 703(a) of the Tariff Act of 1930, as amended, that there exists no reasonable indication of material injury or threat thereof to the domestic industries producing certain seamless steel pipe and tube, because of importation of certain seamless steel pipe and tube into the United States at less than fair value sales from Japan.

Plaintiff-appellee brought this action for judicial review by the United States Court of International Trade pursuant to Section 516A(a)(1) of the Tariff Act of 1930, as amended, contending that the Court has exclusive jurisdiction over this action in accordance with the applicable provision of 28 U.S.C.A. Subsection 1582(b)(1973). Plaintiff-appellee contends that the Commission's action is arbitrary, capricious and not in accordance with law; that the Commission's application of the term "industry," as defined in Section 771(4) of the Tariff Act of 1930, as amended, is not consistent with the express provisions of legislative intent of the Trade Agreement Act of 1979; that the Commission relied upon incomplete and insufficient data in making its preliminary injury determination; that the Commission's determination was based upon conclusions of fact unsupported by the record; that the Commission's determination was based upon an incomplete investigation and not upon adequately verified data submitted by interested parties; and that the Commission misinterpreted and misapplied the reasonable indication of material injury standard set forth in Section 733 of the Tariff Act of 1930, as amended.

Intervenor-appellant filed a motion as amicus curiae with the United States Court of International Trade for leave to intervene in this action. The Court denied the motion. Intervenor-appellant then

filed a motion with the Court for a rehearing and modification of the Court's denial of the motion for leave to intervene in this action or alternatively, for a stay pending appeal on the grounds that Intervenor-appellant is in fact an interested party involved in the proceedings at issue. This motion was also denied by the United States Court of International Trade.

ERRATUM

In CUSTOMS BULLETIN Vol. 15, No. 52, dated December 30, 1981, page 35 should read as follows:

Defendant also contends, in the alternative, that plaintiff has failed to exhaust its administrative remedies as required by 28 U.S.C. § 2637(d) which states that this court "shall, where appropriate, require the exhaustion of administrative remedies." The question presented then is whether given the circumstances here, it would be appropriate for the court to require further administrative proceedings.

As noted earlier, Uniroyal filed a request for internal advice from Customs Headquarters on March 4, 1980, pursuant to section 177.11 of the Customs Regulations (19 C.F.R. § 177.11).[7] In its request, Uniroyal contended that the merchandise need not be marked with the country of origin because the ultimate purchaser exception of section 304(a)(3)(H) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1304(a)(3)(H), was applicable. This contention was, however, specifically rejected by Customs Headquarters in a ruling dated July 2, 1981. The significance of this response to plaintiff's request for internal advice is made clear by 19 C.F.R. § 177.11(b)(6) which states:

(6) *Effect of advice received from the Headquarters Office.* Advice furnished by the Headquarters Office in response to a request therefor represents the official position of the Customs Service as to the application of the Customs laws to the facts of a specific transaction. If the field office believes that the advice furnished by the Headquarters Office should be reconsidered, it shall promptly request such reconsideration. Otherwise, the ad-

[7] 19. C.F.R. § 177.11(b) provides:

(2) * * * Internal advice will be sought by a Customs Service field office with respect to a current transaction for which no ruling was requested or issued under the provisions of this part whenever a difference of opinion exists as to the interpretation or proper application of the Customs and related laws to the transaction, and the field office is requested to seek such advice by an importer or other person who would have been entitled, under § 177.1(c), to request a ruling with respect to the transaction while prospective. * * *

vice furnished by the Headquarters Office will be applied by the field office in its disposition of the Customs transaction in question.

Here, the field office has not requested reconsideration and the ruling is therefore controlling authority governing not only field office determinations as to whether the marking of plaintiff's merchandise is required but also the disposition of any protest which might be filed challenging such field office determinations. Stated otherwise, a protest by plaintiff of Customs' marking requirement on the ground that such requirement violates the ultimate user exception would present nothing for resolution as Customs has already authoritatively determined this precise question. Because of this, the court concludes that no legitimate interest of defendant will be served by requiring plaintiff to file a protest here and that mandating further administrative proceeding would be purposeless and thus not appropriate. See, e.g., *Porter City, Chap. of Izaak Walton League* v. *Costle*, 571 F. 2d 359, 363 (7th Cir. 1978), *cert. denied*, 439 U.S. 834 (1978); *Am. Fed. of Government Emp.* v. *Dunn*, 561 F. 2d 1310, 1314 (9th Cir. 1977).

This does not mean that litigants may file requests for internal

International Trade Commission Notices

Investigations by the U.S. International Trade Commission

DEPARTMENT OF THE TREASURY, JANUARY 28, 1982

The appended notices relating to investigations by the U.S. International Trade Commission are published for the information of Customs officers and others concerned.

WILLIAM VON RAAB,
Commissioner of Customs.

Investigation No. 751–TA–5

SALMON GILL FISH NETTING OF MANMADE FIBERS FROM JAPAN

Notice of Change of Public Hearing Date

AGENCY: United States International Trade Commission.

ACTION: Change of date of public hearing in connection with investigation No. 751–TA–5.

SUMMARY: Notice is hereby given that the United States International Trade Commission has changed the date of the previously announced public hearing in the subject investigation (46 F.R. 62347). The hearing will now be held on March 2, 1982, beginning at 10:00 a.m., p.s.t., in room 223 of the New Federal Building, 1220 S.W. 3rd Street, Portland, Oregon.

SUPPLEMENTARY INFORMATION: Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m., e.s.t.) on January 29, 1982. All persons desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 2:00 p.m., e.s.t., on February 2, 1982, in Room 117 of the U.S. Inter-

national Trade Commission Building and must file prehearing statements on or before February 10, 1982. Any person may submit to the Commission on or before March 9, 1982, written statements of information pertinent to the subject matter of the investigation.

FOR FURTHER INFORMATION CONTACT: Daniel Leahy, Office of Investigations, U.S. International Trade Commission, (202) 523–1369.

By order of the Commission.

Issued: January 20, 1982.

KENNETH R. MASON,
Secretary.

(332–134)

Conditions Relating to the Importation of Canadian Softwood Lumber into the United States

AGENCY: United States International Trade Commission.

ACTION: The Commission has rescheduled the hearing dates for the above captioned investigation No. 332–134. The hearing will now be held in Room 223, Federal Center Building, 1220 SW 3rd Street, Portland, Oregon, beginning at 10:00 a.m., on March 3, 1982, and continued on March 4, 1982 as required. Requests to appear at the public hearing should be filed in writing with the Secretary, United States International Trade Commission, 701 E Street NW., Washington, D.C. 20436, not later than noon February 24, 1982. Written statements should be submitted at the earliest practicable date, but no later than March 5, 1982.

The hearing was originally scheduled to begin February 17, 1982. The Commission's initial notice concerning the investigation, including the scope, the hearing, and procedures for submitting information, was published in the Federal Register of December 29, 1981 (46 F.R. 62969–62970).

Transmission of the Commission's report on this investigation to the Committee on Finance is scheduled for April 19, 1982.

By order of the Commission.

Issued: January 20, 1982.

KENNETH R. MASON,
Secretary.

In the Matter of CERTAIN MINIATURE PLUG-IN BLADE FUSES	Investigation No. 337–TA–114

Order

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Janet D. Saxon as Presiding Officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the Federal Register.

Issued: January 18, 1982.

DONALD K. DUVALL,
Chief Administrative Law Judge.

In the Matter of CERTAIN LOG SPLITTING PIVOTED LEVER AXES	Investigation No. 337–TA–113

Order No. 1

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Donald K. Duvall as Presiding Officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the Federal Register.

Issued: January 15, 1982.

DONALD K. DUVALL,
Chief Administrative Law Judge.

Investigation No. 104–TAA–6

BARLEY FROM FRANCE

AGENCY: United States International Trade Commission.

ACTION: Institution of a countervailing duty investigation.

SUMMARY: The Commission is hereby instituting an investigation under section 104(b)(1) of the Trade Agreements Act of 1979 (19 U.S.C. § 1671 note) to determine whether an industry in the United States would be materially injured, threatened with material injury, or whether the establishment of an industry in the United States

would be materially retarded, by reason of imports of barley from France if countervailing duties provided by T.D. 71–117 were to be revoked.

The Commission does not plan to hold a public hearing or to solicit information by questionnaire. Requests for a hearing or for the issuance of questionnaires will be considered by the Commission.

EFFECTIVE DATE: January 15, 1982.

FOR FURTHER INFORMATION CONTACT: John MacHatton, Supervisory Investigator, U.S. International Trade Commission, Washington, D.C. 20436 (202–523–0439).

SUPPLEMENTARY INFORMATION:

BACKGROUND

On May 5, 1971 in T.D. 71–117, the Department of the Treasury (Treasury) imposed countervailing duties, under section 303 of the Tariff Act of 1930, on barley imported from France. Imports of barley from France, currently provided for under items 130.08 and 130.11 of the Tariff Schedules of the United States are presently subject to countervailing duties of $0.04 per bushel in those months when the world market price for barley is lower than the European Communities "threshold" price.

On January 1, 1980, the provisions of the Trade Agreements Act of 1979 (P.L. 96–39, 93 Stat. 144) became effective, and on January 2, 1980, the authority for administering the countervailing duty statute was transferred from Treasury to the Department of Commerce (Commerce).

On March 28, 1980, the U.S. International Trade Commission received a request from the Delegation of the Commission of the European Communities for an investigation under section 104(b)(1) of the Trade Agreements Act of 1979 (the Act), with respect to barley from France. In accordance with section 104(b)(3) of the Act, the Commission notified the Department of Commerce of its receipt of the request for this investigation. On May 13, 1980, Commerce published a notice in the Federal Register (44 F.R. 31455) of intent to conduct an annual administrative review of all outstanding conutervailing duty orders.

As required by section 751(a)(1) of the Tariff Act of 1930, Commerce has now conducted its first annual administrative review of the countervailing duty order on barley from France. As a result, on October 27, 1981, Commerce published in the Federal Register its preliminary determination that the net subsidy conferred was $0.04 per bushel in those months in which the world market price for barley

fell below the European Communities "threshold" price (46 F.R. 52406). Of the 18-month period, January 1, 1980 through June 30, 1981, studied in the Commerce review, restitution payments occurred only during the months of May and June 1981. On the basis of that preliminary determination, the U.S. International Trade Commission, pursuant to section 104(b)(2) of the Trade Agreements Act, is instituting this countervailing duty investigation to determine whether an industry in the United States would be materially injured, would be threatened with material injury, or the establishment of an industry in the United States would be materially retarded, by reason of imports of barley from France provided for under items 130.08 and 130.11 of the Tariff Schedules of the United States covered by the countervailing duty if the order were to be revoked.

Public Hearing: Any person with an interest in this investigation may request in writing that the Commission hold a public hearing in connection with this investigation. Any such request must be received by the Commission within 14 days of the date of publication of this notice in the Federal Register. Such request should be filed with the Office of the Secretary, U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. 20436.

Questionnaires: No questionnaires soliciting information from U.S. producers, importers, or purchasers of the articles under investigation will be prepared or mailed unless an interested party, as defined in section 771(a) of the Tariff Act of 1930 (U.S.C. 1677(a)) requests that the Commission prepare and mail such questionnaires and the Commission approves the request. Any such request must be received by the Commission within 14 days of the date of publication of this notice in the Federal Register. Such requests should be filed with the Office of the Secretary, U.S. International Trade Commission Building, 701 E Street N.W., Washington, D.C. 20436.

Written submissions: Any person may submit to the Commission on or before February 10, 1982, written statements of information pertinent to the subject matter of the investigation. A signed original and nineteen true copies of such statements must be submitted in accordance with section 201.8 of the Commission's Rules of Practice and Procedure. 19 CFR 201.8 (1980). All written submissions, except confidential business data, will be available for public inspection.

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform with the requirements of section 201.6 of the Rules of Practice and Procedure 19 CFR 201.6.

For further information concerning the conduct of the investigation, hearing procedures, and rules of general application, consult the

Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR 207), and part 201, subparts A through E 19 CFR 201.

This notice is published pursuant to section 207.20 of the Commission's Rules of Practice and Procedure, 19 CFR 207.20.

By order of the Commission.

Issued: January 15, 1982.

KENNETH R. MASON,
Secretary.

In the Matter of CERTAIN COIN-OPERATED AUDIOVISUAL GAMES AND COMPONENTS THEREOF (VIZ., PAC-MAN AND RALLY-X)	Investigation No. 337–TA–105

Notice of Issuance of Temporary Cease and Desist Orders

AGENCY: U.S. International Trade Commission.

ACTION: Issuance of temporary cease and desist orders.

SUMMARY: Notice is hereby given that the Commission has issued temporary cease and desist orders in the above-captioned investigation. Pursuant to the orders, the named respondents are directed to cease and desist from the importation and sale of coin-operated audiovisual games which there is reason to believe infringe complainant Midway Manufacturing Co.'s copyright in the Pac-Man audiovisual work and common law trademark in the term "Pac-Man."

FOR FURTHER INFORMATION CONTACT: Jack Simmons, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0350.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The Commission instituted this investigation to determine whether there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation or sale of certain coin-operated audiovisual games and components thereof which are alleged to infringe Midway's copyrights and common law trademark rights. Notice thereof was published in the Federal Register of July 1, 1981 (46 F.R. 34436).

On January 4, 1982, the Commission determined (Commissioner Stern dissenting) that there is reason to believe that a violation of sec-

tion 337 exists with regard to the Pac-Man game and that there is no reason to believe that a violation exists with regard to the Rally-X game. The Commission determined that the appropriate remedy is the issuance of cease and desist orders to be in force and effect for the remaining term of the investigation. Pursuant to the orders, the named respondents may not import, except under bond, or sell any coin-operated audiovisual game or certain components thereof which display a work substantially similar to Pac-Man. In addition, the named respondents may not import audiovisual game machines which display the term Pac-Man or confusingly similar terms, except into the Hawaiian market under written authorization of K & K Industrial Services.

Respondents: The following persons are directed to cease and desist: Artic International, Inc.; Carlin Tiger Shokai, Ltd.; Ferncrest Distributors, Inc.; Formosa Products Industrial Corp.; Friend Spring Industrial Co., Ltd.; International Scientific Co., Ltd.; Jay's Industries; K & K Industrial Services; Kyugo Co., Ltd.; Loson Electrical Co.; Morrison Enterprises Corp.; Nippon Semicon, Inc.; Omni Video Games, Inc.; Stan Rousso, Inc.; Seagull Industries Co., Ltd.; Sepac Co., Ltd.; Shoei Co., Ltd.; and SP-World-Amusement Co., Ltd.

Public Inspection: Copies of the Commission's Action and Order, the Cease and Desist Orders, and all other public documents on the record of the investigation are available for inspection during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 161, Washington, D.C. 20436, telephone 202–523–0161.

By order of the Commission.

Issued: January 15, 1982.

KENNETH R. MASON,
Secretary.

Investigations Nos. 701–TA–140 Through 144 (Preliminary)

COLD–FORMED ALLOY STEEL BAR

AGENCY: United States International Trade Commission.

ACTION: Institution of preliminary countervailing duty investigations and the scheduling of a conference to be held in connection with the investigations.

SUMMARY: The U.S. International Trade Commission hereby gives notice of the institution of investigations Nos. 701–TA–140 through 144 (Preliminary) under section 703(a) of the Tariff of 1930

(19 U.S.C. § 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Belgium, France, Italy, the United Kingdom, and West Germany of cold-formed alloy steel bar, provided for in item 606.9900 of the Tariff Schedules of the United States Annotated (1982), upon which bounties or grants are alleged to be paid.

EFFECTIVE DATE: January 11, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Miller, Office of Investigations, U.S. International Trade Commission; telephone 202–523–0305.

SUPPLEMENTARY INFORMATION:

BACKGROUND

These investigations are being instituted in response to petitions filed January 11, 1982, on behalf of Republic Steel Corp., Inland Steel Corp., Jones & Laughlin Steel, Inc., National Steel Corp., and Cyclops Steel Corp. The Commission must make its determinations in these investigations within 45 days after the date of the filing of the petitions or by February 25, 1982 (19 CFR § 207.17). The investigations will be subject to the provisions of part 207 of the Commission's Rules of Practice and Procedure (19 CFR § 207, 44 F.R. 76457), and particularly subpart B thereof.

Written submissions: Any person may submit to the Commission on or before February 9, 1982, a written statement of information pertinent to the subject matter of the investigations. A signed original and nineteen copies of such statements must be submitted.

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately, and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR § 201.6). All written submissions, except for confidential business data, will be available for public inspection.

Conference: The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m., e.s.t., on February 3, 1982, at the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. Parties wishing to participate in the conference should contact the supervisory investigator for the investigations, Mr. Lynn Featherstone, telephone 202–523–0242, not later than January 27, 1982, to arrange for their

appearance. The conference in these investigations will be held concurrently with that for countervailing duty investigations Nos. 701–TA–86 through 139 (Preliminary) and antidumping investigations Nos. 731–TA–53 through 86 (Preliminary).

For further information concerning the conduct of the investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR § 207), and part 201, subparts A through E (19 CFR § 201). Further information concerning the conduct of the conference will be provided by Mr. Featherstone.

This notice is published pursuant to section 207.12 of the Commission's Rules of Practice and Procedure (19 CFR § 207.12).

By order of the Commission.

Issued: January 15, 1982.

KENNETH R. MASON,
Secretary.

Termination of Countervailing Duty Investigation Concerning Compressors and Parts Thereof From Italy

AGENCY: U.S. International Trade Commission.

ACTION: Termination of countervailing duty investigation under section 104(b)(1) of the Trade Agreements Act of 1979, with regard to compressors and parts thereof from Italy.

EFFECTIVE DATE: January 12, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Reavis, Office of Investigations, telephone number (202) 523–0296.

SUPPLEMENTARY INFORMATION: The Trade Agreements Act of 1979, section 104(b)(1), requires the Commission in the case of a countervailing duty order issued under section 303 of the Tariff Act of 1930, upon the request of a government or group of exporters of merchandise covered by the order, to conduct an investigation to determine whether an industry in the United States would be materially injured, or threatened with material injury, or whether the establishment of such an industry would be materially retarded, if the order were to be revoked. On March 28, 1980, the Commission received a request from the Delegation of the Commission of the European Communities for the review of the outstanding countervailing duty order on compressors and parts thereof from Italy (T.D. 72–122).

On November 16, 1981, the Commission received a letter from

counsel for Tecumseh Products Company, the original petitioner for the countervailing duty order, stating that it was withdrawing its request for the imposition of countervailing duties under the above referenced countervailing duty order.

While there is no provision in the Trade Agreements Act of 1979, or in its legislative history, permitting termination of a transition case investigation, termination of a properly instituted countervailing duty investigation is permitted under section 704(a) of the Tariff Act of 1930. Termination authority is explicit in cases based on newly filed countervailing duty petitions; it is implied with respect to existing countervailing duty orders. Before terminating a section 104 investigation the Commission solicits public comment, then approves the termination only if it is in the public interest.

On December 2, 1981, (45 F.R. 58616) the Commission published a notice in the Federal Register requesting public comment by January 4, 1982, on the proposed termination of the Commission investigation on compressors and parts thereof from Italy. No adverse comments were received in response to the Commission's notice.

The Commission is therefore terminating its investigation under section 104(b)(1) of the Trade Agreements Act of 1979 on compressors and parts thereof from Italy (T.D. 72–122). The termination of this investigation has the same effect as a determination that an industry in the United States would not be materially injured, or threatened with material injury, nor would the establishment of such an industry be materially retarded, if the countervailing duty order were to be revoked.

In addition to publishing this Federal Register notice, the Commission is serving a copy of this notice on all persons who have written the agency in connection with this investigation and is also notifying the Department of Commerce of its action in this case.

By order of the Commission.

Issued: January 15, 1982.

KENNETH R. MASON,
Secretary.

Investigations Nos. 701–TA–130 Through 133 (Preliminary)

HOT-ROLLED ALLOY STEEL BAR

AGENCY: United States International Trade Commission.

ACTION: Institution of preliminary countervailing duty investigations and the scheduling of a conference to be held in connection with the investigations.

SUMMARY: The U.S. International Trade Commission hereby gives notice of the institution of investigations Nos. 701–TA–130 through 133 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. § 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from France, Italy, the United Kingdom, and West Germany of hot-rolled alloy steel bar, provided for in item 606.9700 of the Tariff Schedules of the United States Annotated (1982), upon which bounties or grants are alleged to be paid.

EFFECTIVE DATE: January 11, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Miller, Office of Investigations, U.S. International Trade Commission; telephone 202–523–0305.

SUPPLEMENTARY INFORMATION:

BACKGROUND

These investigations are being instituted in response to petitions filed January 11, 1982, on behalf of Republic Steel Corp., Inland Steel Corp., Jones & Laughlin Steel, Inc., National Steel Corp., and Cyclops Steel Corp. The Commission must make its determinations in these investigations within 45 days after the date of the filing of the petitions or by February 25, 1982 (19 CFR § 207.17). The investigations will be subject to the provisions of part 207 of the Commission's Rules of Practice and Procedure (19 CFR § 207, 44 F.R. 76457), and particularly subpart B thereof.

Written submissions: Any person may submit to the Commission on or before February 9, 1982, a written statement of information pertinent to the subject matter of the investigations. A signed original and nineteen copies of such statements must be submitted.

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately, and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR § 201.6). All written submissions, except for confidental business data, will be available for public inspection.

Conference: The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m., e.s.t., on February 3, 1982, at the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C.

Parties wishing to participate in the conference should contact the supervisory investigator for the investigations, Mr. Lynn Featherstone, telephone 202–523–0242, not later than January 27, 1982, to arrange for their appearance. The conference in these investigations will be held concurrently with that for countervailing duty investigations Nos. 701–TA–86 through 129 and 134 through 144 (Preliminary) and antidumping investigations Nos. 731–TA–53 through 86 (Preliminary).

For further information concerning the conduct of the investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR § 207), and part 201, subparts A through E (19 CFR § 201). Further information concerning the conduct of the conference will be provided by Mr. Featherstone.

This notice is published pursuant to section 207.12 of the Commission's Rules of Practice and Procedure (19 CFR § 207.12).

By order of the Commission.

Issued: January 15, 1982.

KENNETH R. MASON,
Secretary.

Investigations Nos. 701–TA–94 Through 101 (Preliminary)

Investigations Nos. 731–TA–61 Through 67 (Preliminary)

HOT-ROLLED CARBON STEEL SHEET AND STRIP

AGENCY: United States International Trade Commission.

ACTION: Institution of preliminary countervailing duty and antidumping investigations and the scheduling of a conference to be held in connection with the investigations.

SUMMARY: The U.S. International Trade Commission hereby gives notice of the institution of investigations Nos. 701–TA–94 through 101 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. § 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Belgium, Brazil, France, Italy, Luxembourg, the Netherlands, the United Kingdom, and West Germany of hot-rolled carbon steel sheet, provided for in items 607.6610, 607.6700, 607.8320, 607.8342, and 607.9400 of the Tariff Schedules of the United States Annotated (1982) (TSUSA), upon which bounties or grants are alleged to be paid. The Commission also gives notice of the investi-

gation of imports of hot-rolled carbon steel strip, provided for in TSUSA items 608.1920, 608.2120, and 608.2320, from all of these countries except Brazil (investigation No. 701–TA–95 (Preliminary)). The Commission also gives notice of the institution of investigations Nos. 731–TA–61 through 67 (Preliminary) under section 733(a) of the Tariff Act (19 U.S.C. § 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Belgium, France, Italy, Luxembourg, the Netherlands, the United Kingdom, and West Germany of hot-rolled carbon steel sheet and strip, provided for in items 607.6610, 607.6700, 607.8320, 607.8342, 607.9400, 608.1920, 608.2120, and 608.2320, of the Tariff Schedules, which are alleged to be sold in the United States at less than fair value.

EFFECTIVE DATE: January 11, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Leahy, Office of Investigations, U.S. International Trade Commission; telephone 202–523–1369.

SUPPLEMENTARY INFORMATION:

BACKGROUND

These investigations are being instituted in response to petitions filed January 11, 1982, on behalf of United States Steel Corp., Bethlehem Steel Corp., Republic Steel Corp., Inland Steel Corp., Jones & Laughlin Steel, Inc., National Steel Corp., and Cyclops Steel Corp. The Commission must make its determinations in these investigations within 45 days after the date of the filing of the petitions or by February 25, 1982 (19 CFR § 207.17). The investigations will be subject to the provisions of part 207 of the Commission's Rules of Practice and Procedure (19 CFR § 207, 44 F.R. 76457), and particularly subpart B thereof.

Written submissions: Any person may submit to the Commission on or before February 9, 1982, a written statement of information pertinent to the subject matter of the investigations. A signed original and nineteen copies of such statements must be submitted.

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately, and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure

(19 CFR § 201.6). All written submissions, except for confidential business data, will be available for public inspection.

Conference: The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m., e.s.t., on February 3, 1982, at the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. Parties wishing to participate in the conference should contact the supervisory investigator for the investigations, Mr. Lynn Featherstone, telephone 202–523–0242, not later than January 27, 1982, to arrange for their appearance. The conference in these investigations will be held concurrently with that for countervailing duty investigations Nos. 701–TA–86 through 93 and 102 through 144 (Preliminary) and antidumping investigations Nos. 731–TA–53 through 60 and 68 through 86 (Preliminary).

Record: The record of Commission investigation No. 701–TA–85 (Preliminary), Hot-Rolled Carbon Steel Sheet from France will be incorporated in the records of investigations Nos. 701–TA–94 through 101 (Preliminary) and investigations Nos. 731–TA–61 through 67 (Preliminary).

For further information concerning the conduct of the investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR § 207), and part 201, subparts A through E (19 CFR § 201). Further information concerning the conduct of the conference will be provided by Mr. Featherstone.

This notice is published pursuant to section 207.12 of the Commission's Rules of Practice and Procedure (19 CFR § 207.12).

By order of the Commission.

Issued: January 15, 1982.

KENNETH R. MASON,
Secretary.

Investigations Nos. 701–TA–102 through 109 (Preliminary)

Investigations Nos. 731–TA–68 through 74 (Preliminary)

COLD-ROLLED CARBON STEEL SHEET AND STRIP

AGENCY: United States International Trade Commission.

ACTION: Institution of preliminary countervailing duty and antidumping investigations and the scheduling of a conference to be held in connection with the investigations.

SUMMARY: The U.S. International Trade Commission hereby gives notice of the institution of investigations Nos. 701–TA–102 through 109 (Preliminary) under section 703(a) of the Tariff Act

of 1930 (19 U.S.C. § 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Belgium, Brazil, France, Italy, Luxembourg, the Netherlands, the United Kingdom, and West Germany of cold-rolled carbon steel sheet, provided for in items 607.8320 and 607.8344 of the Tariff Schedules of the United States Annotated (1982) (TSUSA), upon which bounties or grants are alleged to be paid. The Commission also gives notice of the investigation of imports of cold-rolled carbon steel strip, provided for in TSUSA items 608.1940, 608.2140, and 608.2340, from all of these countries except Brazil (investigation No. 701–TA–103 (Preliminary)).

The Commission also gives notice of the institution of investigations Nos. 731–TA–68 through 74 (Preliminary) under section 733(a) of the Tariff Act (19 U.S.C. § 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Belgium, France, Italy, Luxembourg, the Netherlands, the United Kingdom, and West Germany of cold-rolled carbon steel sheet and strip, provided for in items 607.8320, 607.8344, 608.1940, 608.2140, and 608.2340 of the Tariff Schedules, which are alleged to be sold in the United States at less than fair value.

EFFECTIVE DATE: January 11, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. William Schechter, Office of Investigations, U.S. International Trade Commission; telephone 202–523–0300.

SUPPLEMENTARY INFORMATION:

BACKGROUND

These investigations are being instituted in response to petitions filed January 11, 1982, on behalf of United States Steel Corp., Bethlehem Steel Corp., Republic Steel Corp., Inland Steel Corp., Jones & Laughlin Steel, Inc., National Steel Corp., and Cyclops Steel Corp. The Commission must make its determinations in these investigations within 45 days after the date of the filing of the petitions or by February 25, 1982 (19 CFR § 207.17). The investigations will be subject to the provisions of part 207 of the Commission's Rules of Practice and Procedure (19 CFR § 207, 44 F.R. 76457), and particularly subpart B thereof.

Written submissions: Any person may submit to the Commission on or before February 9, 1982, a written statement of information

pertinent to the subject matter of the investigations. A signed original and nineteen copies of such statements must be submitted.

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately, and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR § 201.6). All written submissions, except for confidential business data, will be available for public inspection.

Conference: The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m., e.s.t., on February 3, 1982, at the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. Parties wishing to participate in the conference should contact the supervisory investigator for the investigations, Mr. Lynn Featherstone, telephone 202–523–0242, not later than January 27, 1982, to arrange for their appearance. The conference in these investigations will be held concurrently with that for countervailing duty investigations Nos. 701–TA–86 through 101 and 110 through 144 (Preliminary) and antidumping investigations Nos. 731–TA–53 through 67 and 75 through 86 (Preliminary).

For further information concerning the conduct of the investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR § 207), and part 201, subparts A through E (19 CFR § 201). Further information concerning the conduct of the conference will be provided by Mr. Featherstone.

This notice is published pursuant to section 207.12 of the Commission's Rules of Practice and Procedure (19 CFR § 207.12).

By order of the Commission.

Issued: January 15, 1982.

KENNETH R. MASON,
Secretary.

In the Matter of
CERTAIN STEEL ROD TREATING APPARATUS AND COMPONENTS THEREOF } Investigation 337–TA–97

Notice of Revocation of Exclusion Order, Reopening of Investigation as to remedy, Bonding, and the Public Interest, Issuance of Order Permitting Entry Under Bond, and of Suspension of Investigation Pending Judicial Proceedings

AGENCY: U.S. International Trade Commission.

ACTION: Revocation of exclusion order, reopening of investigation No. 337–TA–97 as to remedy, bonding, and the public interest, issuance of order permitting entry under bond, and of suspension of investigation pending judicial proceedings.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation to determine whether there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation or sale of certain steel rod treating apparatus and components thereof. Notice of the institution of the investigation was published in the Federal Register of January 28, 1981 (46 F.R. 9262).

On December 1, 1981, the Commission unanimously determined that there is a violation of section 337 in the unauthorized sale for importation of certain steel rod treating apparatus and components thereof which infringe U.S. Letters Patent 3,390,871. The Commission further determined that the appropriate remedy is an exclusion order pursuant to section 337(d) excluding from entry into the United States certain steel rod treating apparatus which are manufactured by or on behalf of Korf Industrie und Handel, GmbH, Korf Engineering, GmbH, Korf Industries, Inc., Ashlow Ltd., Ashlow Corp., Mr.Willy Korf and/or Mr. Johann Heinrich Rohde, or any successor, assignee, parent company, affiliated person, subsidiary, or related business entity of the above-named parties respondent, or which are sought to be imported by Georgetown Steel Corporation.

On December 30, 1981, the U.S. District Court for the District of South Carolina indicated that in a forthcoming final order to be issued on or about February 1, 1982, the court would hold U.S. Letters Patent 3,390,871 invalid and unenforceable. *Ashlow Ltd. et al v. Morgan Construction Co.* (D.S.C., Civ. No. 81–936–5). The court further indicated that it was prepared to grant Morgan's motion for an expedited appeal to the U.S. Court of Appeals for the Fourth Circuit.

On December 31, 1981, respondents Ashlow Ltd., Ashlow Corp., Korf Industries, Inc., Georgetown Steel Corp., Korf Industrie und Handel, Korf Engineering, Mr. Willy Korf, and Mr. Johann Heinrich Rohde, moved that the Commission stay or suspend its exclusion order and for an expedited decision thereon (Motion No. 97–64). The Commission has granted Motion No. 97–64, subject to certain measures designed to protect the *status quo* pending Morgan's exhaustion of its appeal rights. Specifically, the Commission has issued an order permitting entry of the subject apparatus under bond pursuant to section 337(e).

Copies of the Commission's Action and Order, the Commission's opinion, and all other public documents on the record of the investigation are available for inspection by the public during official working

hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 161, Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Warren H. Maruyama, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0375.

By order of the Commission.

Issued: January 15, 1982.

KENNETH R. MASON,
Secretary.

Investigation No. 22–45

SUGAR

AGENCY: United States International Trade Commission.

ACTION: Institution of an investigation under section 22(a) of the Agricultural Adjustment Act (7 U.S.C. 624(a)) to determine whether sugars, sirups, and molasses, derived from sugar cane or sugar beets, provided for in items 155.20 and 155.30 of the Tariff Schedules of the United States (TSUS), are being, or are practically certain to be, imported into the United States under such conditions and in such quantities as to render or tend to render ineffective, or materially interfere with, the price-support program for sugar cane and sugar beets of the U.S. Department of Agriculture.

EFFECTIVE DATE: JANUARY 15, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. T. Vernon Greer, 202–724–0074.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The investigation (No. 22–45) was instituted following receipt of a letter dated December 23, 1981, from the President directing the Commission to conduct it. The letter stated that the President agreed with advice from the Secretary of Agriculture that there is reason to believe that sugars, sirups, and molasses, provided for in TSUS items 155.20 and 155.30, are being imported or are practically certain to be imported under such conditions and in such quantities as to materially interfere with the price-support program for sugar cane and sugar beets undertaken by the Department of Agriculture.

The President's letter also stated that he was that day taking emergency action under section 22(b) of the Agricultural Adjustment

Act and issuing a proclamation imposing import fees on the above-mentioned sugars, sirups, and molasses, with such fees to continue in effect pending the report and recommendation of the Ciommisson and action that he may take thereon.

Public hearing: The Commission will hold a public hearing in connection with this investigation beginning at 10:00 a.m., on Tuesday, April 6, 1982, in the Hearing Room of the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on March 18, 1982. For further information concerning the conduct of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 204 (19 CFR 204) and part 201 (19 CFR 201).

Prehearing procedures: A prehearing conference will be held on Monday, March 22, 1982, at 10:00 a.m., in Room 117 of the U.S. International Trade Commission Building.

To facilitate the hearing process, it is requested that persons wishing to appear at the hearing submit prehearing briefs enumerating and discussing the issues which they wish to raise at the hearing. Nineteen copies of such prehearing briefs should be submitted to the Secretary to the Commission no later than the close of business on March 31, 1982. Copies of any prehearing briefs submitted will be available for public inspection in the Office of the Secretary. While submission of prehearing briefs does not prohibit submission of prepared statements in accordance with section 201.12(d) of the Commission's Rules of Practice and Procedure (19 CFR 201.12(d)), statements are unnecessary if briefs are submitted. Oral presentation should, to the extent possible, be limited to issues raised in the prehearing briefs.

Persons not represented by counsel or public officials who have relevant matters to present may give testimony without regard to the suggested prehearing procedures outlined in this notice.

Written submissions: In addition to or in lieu of an appearance at the hearing, interested persons may submit to the Commission a written statement of information pertinent to the subject matter of this investigation. Written statements should be addressed to the Secretary to the Commission, 701 E Street, NW., Washington, D.C. 20436, and must be received not later than April 14, 1982. All written submissions, except for confidential business data, will be available for public inspection.

Any business information which a submitter desires the Commission to treat as confidential must be submitted separately, and each sheet must be clearly marked at the top "Confidential Business Data."

Confidential submissions must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business data, will be available for public inspection.

By order of the Commission.

Issued: January 15, 1982.

KENNETH R. MASON,
Secretary.

Investigations Nos. 701–TA–117 Through 124 (Preliminary)

Investigations Nos. 731–TA–82 Through 86 (Preliminary)

CARBON STEEL STRUCTURAL SHAPES

AGENCY: United States International Trade Commission.

ACTION: Institution of preliminary countervailing duty and antidumping investigations and the scheduling of a conference to be held in connection with the investigations.

SUMMARY: The U.S. International Trade Commission hereby gives notice of the institution of investigations Nos. 701–TA–117 through 124 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. § 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Belgium, Brazil, France, Italy, Luxembourg, the Netherlands, the United Kingdom, and West Germany of carbon steel structural shapes, provided for in items 609.8005, 609.8015, 609.8035, 609.8041, and 609.8045 of the Tariff Schedules of the United States Annotated (1982), upon which bounties or grants are alleged to be paid.

The Commission also gives notice of the institution of investigations Nos. 731–TA–82 through 86 (Preliminary) under section 733(a) of the Tariff Act (19 U.S.C. § 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, Kingdom, and West Germany of carbon steel structural shapes, provided for in items 609.8005, 609.8015, 609.8035, 609.8041, and 609.8045 of the Tariff Schedules, which are alleged to be sold in the United States at less than fair value.

EFFECTIVE DATE: January 11, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Leahy,

Office of Investigations, U.S. International Trade Commission; telephone 202–523–1369.

SUPPLEMENTARY INFORMATION:

BACKGROUND

These investigations are being instituted in response to petitions filed January 11, 1982, on behalf of United States Steel Corp., Bethlehem Steel Corp., Republic Steel Corp., Inland Steel Corp., Jones & Laughlin Steel, Inc., National Steel Corp., and Cyclops Steel Corp. The Commission must make its determinations in these investigations within 45 days after the date of the filing of the petitions or by February 25, 1982 (19 CFR § 207.17). The investigations will be subject to the provisions of part 207 of the Commission's Rules of Practice and Procedure (19 CFR § 207, 44 F.R. 76457), and particularly subpart B thereof.

Written submissions: Any person may submit to the Commission on or before February 9, 1982, a written statement of information pertinent to the subject matter of the investigations. A signed original and nineteen copies of such statements must be submitted.

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately, and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR § 201.6). All written submissions, except for confidential business data, will be available for public inspection.

Conference: The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m., e.s.t., on February 3, 1982, at the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. Parties wishing to participate in the conference should contact the supervisory investigator for the investigations, Mr. Lynn Featherstone, telephone 202–523–0242, not later than January 27, 1982, to arrange for their appearance. The conference in these investigations will be held concurrently with that for countervailing duty investigations Nos. 701–TA–86 through 116 and 125 through 144 (Preliminary) and antidumping investigations Nos. 731–TA–53 through 82 (Preliminary).

For further information concerning the conduct of the investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR § 207), and part 201, subparts A through E (19 CFR § 201). Further information concerning the conduct of the conference will be provided by Mr. Featherstone.

This notice is published pursuant to section 207.12 of the Commission's Rules of Practice and Procedure (19 CFR § 207.12).

By order of the Commission.

Issued: January 15, 1982.

KENNETH R. MASON,
Secretary.

Investigations Nos. 701–TA–86 Through 93 (Preliminary)
Investigations Nos. 731–TA–53 Through 60 (Preliminary)

HOT-ROLLED CARBON STEEL PLATE

AGENCY: United States International Trade Commission.

ACTION: Institution of preliminary countervailing duty and antidumping investigations and the scheduling of a conference to be held in connection with the investigations.

SUMMARY: The U.S. International Trade Commission hereby gives notice of the institution of investigations Nos. 701–TA–86 through 93 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. § 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Belgium, Brazil, France, Italy, Luxembourg, the Netherlands, the United Kingdom, and West Germany of hot-rolled carbon steel plate, provided for in items 607.6615, 607.9400, 608.0710, and 608.1100 of the Tariff Schedules of the United States Annotated (1982), upon which bounties or grants are alleged to be paid.

The Commission also gives notice of the institution of investigations Nos. 731–TA–53 through 60 (Preliminary) under section 733(a) of the Tariff Act (19 U.S.C. § 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Belgium, France, Italy, Luxembourg, the Netherlands, Romania, the United Kingdom, and West Germany of hot-rolled carbon steel plate, provided for in items 607.6615, 607.9400, 608.0710, and 608.1100 of the Tariff Schedules, which are alleged to be sold in the United States at less than fair value.

EFFECTIVE DATE: January 11, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Eninger, Office of Investigations, U.S. International Trade Commission; telephone 202–523–0312.

SUPPLEMENTARY INFORMATION:

BACKGROUND

These investigations are being instituted in response to petitions filed January 11, 1982, on behalf of United States Steel Corp., Bethlehem Steel Corp., Republic Steel Corp., Inland Steel Corp., Jones & Laughlin Steel, Inc., National Steel Corp., and Cyclops Steel Corp. The Commission must make its determinations in these investigations within 45 days after the date of the filing of the petitions or by February 25, 1982 (19 CFR § 207.17). The investigations will be subject to the provisions of part 207 of the Commission's Rules of Practice and Procedure (19 CFR § 207, 44 F.R. 76457), and particularly subpart B thereof.

Written submissions: Any person may submit to the Commission on or before February 9, 1982, a written statement of information pertinent to the subject matter of the investigations. A signed original and nineteen copies of such statements must be submitted.

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately, and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR § 201.6). All written submissions, except for confidential business data, will be available for public inspection.

Conference: The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m., e.s.t., on February 3, 1982, at the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. Parties wishing to participate in the conference should contact the supervisory investigator for the investigations, Mr. Lynn Featherstone, telephone 202–523–0242, not later than January 27, 1982, to arrange for their appearance. The conference in these investigations will be held concurrently with that for countervailing duty investigations Nos. 701–TA–94 through 144 (Preliminary) and antidumping investigations Nos. 731–TA–61 through 86 (Preliminary).

Record: The records of Commission investigations Nos. 701–TA–83 (Preliminary), Hot-Rolled Carbon Steel Plate from Belgium, 701–TA–84 (Preliminary), Hot-Rolled Carbon Steel Plate from Brazil, and 731–TA–51 (Preliminary), Hot-Rolled Carbon Steel Plate from Romania will be incorporated in the records of investigations Nos. 701–TA–86

through 93 (Preliminary) and investigations Nos. 731–TA–53 through 60 (Preliminary).

For further information concerning the conduct of the investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR § 207), and part 201, subparts A through E (19 CFR § 201). Further information concerning the conduct of the conference will be provided by Mr. Featherstone.

This notice is published pursuant to section 207.12 of the Commission's Rules of Practice and Procedure (19 CFR § 207.12).

By order of the Commission.

Issued: January 15, 1982.

KENNETH R. MASON,
Secretary.

Investigations Nos. 701–TA–110 Through 116 (Preliminary)

Investigations Nos. 731–TA–75 Through 81 (Preliminary)

GALVANIZED CARBON STEEL SHEET

AGENCY: United States International Trade Commission.

ACTION: Institution of preliminary countervailing duty and antidumping investigations and the scheduling of a conference to be held in connection with the investigations.

SUMMARY: The U.S. International Trade Commission hereby gives notice of the institution of investigations Nos. 701–TA–110 through 116 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. § 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Belgium, France, Italy, Luxembourg, the Netherlands, the United Kingdom, and West Germany of galvanized carbon steel sheet, provided for in items 608.0730 and 608.1300 of the Tariff Schedules of the United States Annotated (1982), upon which bounties or grants are alleged to be paid.

The Commission also gives notice of the institution of investigations Nos. 731–TA–75 through 81 (Preliminary) under section 733(a) of the Tariff Act (19 U.S.C. § 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by

reason of imports from Belgium, France, Italy, Luxembourg, the Netherlands, the United Kingdom, and West Germany of galvanized carbon steel sheet, provided for in items 608.0730 and 608.1300 of the Tariff Schedules, which are alleged to be sold in the United States at less than fair value.

EFFECTIVE DATE: January 11, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. William Schechter, Office of Investigations, U.S. International Trade Commission; telephone 202–523–0300.

SUPPLEMENTARY INFORMATION:

BACKGROUND

These investigations are being instituted in response to petitions filed January 11, 1982, on behalf of United States Steel Corp., Bethlehem Steel Corp., Republic Steel Corp., Inland Steel Corp., Jones & Laughlin Steel, Inc., National Steel Corp., and Cyclops Steel Corp. The Commission must make its determinations in these investigations within 45 days after the date of the filing of the petitions or by February 25, 1982 (19 CFR § 207.17). The investigations will be subject to the provisions of part 207 of the Commission's Rules of Practice and Procedure (19 CFR § 207, 44 F.R. 76457), and particularly subpart B thereof.

Written submissions: Any person may submit to the Commission on or before February 9, 1982, a written statement of information pertinent to the subject matter of the investigations. A signed original and nineteen copies of such statements must be submitted.

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately, and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR § 201.6). All written submissions, except for confidential business data, will be available for public inspection.

Conference: The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m., e.s.t., on February 3, 1982, at the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. Parties wishing to participate in the conference should contact the supervisory investigator for the investigations, Mr. Lynn Featherstone, telephone 202–523–0242, not later than January 27, 1982, to arrange for their appearance. The conference in these investigations will be held concurrently with that for countervailing duty investigations Nos.

701–TA–86 through 109 and 117 through 144 (Preliminary) and antidumping investigations Nos. 731–TA–53 through 74 and 82 through 86 (Preliminary).

For further information concerning the conduct of the investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR § 207), and part 201, subparts A through E (19 CFR § 201). Further information concerning the conduct of the conference will be provided by Mr. Featherstone.

This notice is published pursuant to section 207.12 of the Commission's Rules of Practice and Procedure (19 CFR § 207.12).

By order of the Commission.

Issued: January 15, 1982.

KENNETH R. MASON,
Secretary.

Investigations Nos. 701–TA–134 Through 139 (Preliminary)

COLD-FORMED CARBON STEEL BAR

AGENCY: United States International Trade Commission.

ACTION: Institution of preliminary countervailing duty investigations and the scheduling of a conference to be held in connection with the investigations.

SUMMARY: The U.S. International Trade Commission hereby gives notice of the institution of investigations Nos. 701–TA–134 through 139 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. § 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Belgium, Brazil, France, Italy, the United Kingdom, and West Germany of cold-formed carbon steel bar, provided for in items 606.8805 and 606.8815 of the Tariff Schedules of the United States Annotated (1982), upon which bounties or grants are alleged to be paid.

EFFECTIVE DATE: January 11, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Eninger, Office of Investigations, U.S. International Trade Commission; telephone 202–523–0312.

SUPPLEMENTARY INFORMATION:

BACKGROUND

These investigations are being instituted in response to petitions filed January 11, 1982, on behalf of Republic Steel Corp., Inland Steel Corp., Jones & Laughlin Steel, Inc., National Steel Corp., and Cyclops Steel Corp. The Commission must make its determinations in these investigations within 45 days after the date of the filing of the petitions or by February 25, 1982 (19 CFR § 207.17). The investigations will be subject to the provisions of part 207 of the Commission's Rules of Practice and Procedure (19 CFR § 207, 44 F.R. 76457), and particularly subpart B thereof.

Written submissions: Any person may submit to the Commission on or before February 9, 1982, a written statement of information pertinent to the subject matter of the investigations. A signed original and nineteen copies of such statements must be submitted.

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately, and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR § 201.6). All written submissions except for confidential business data, will be available for public inspection.

Conference: The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m., e.s.t., on February 3, 1982, at the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. Parties wishing to participate in the conference should contact the supervisory investigator for the investigations, Mr. Lynn Featherstone, telephone 202–523–0242, not later than January 27, 1982, to arrange for their appearance. The conference in these investigations will be held concurrently with that for countervailing duty investigations Nos. 701–TA–86 through 133 and 140 through 144 (Preliminary) and antidumping investigations Nos. 731–TA–53 through 86 (Preliminary).

For further information concerning the conduct of the investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR § 207), and part 201, subparts A through E (19 CFR § 201). Further information concerning the conduct of the conference will be provided by Mr. Featherstone.

This notice is published pursuant to section 207.12 of the Commission's Rules of Practice and Procedure (19 CFR § 207.12).

By order of the Commission.

Issued: January 15, 1982.

KENNETH R. MASON,
Secretary.

Investigations Nos. 701–TA–125 Through 129 (Preliminary)

HOT-ROLLED CARBON STEEL BAR

AGENCY: United States International Trade Commission.

ACTION: Institution of preliminary countervailing duty investigations and the scheduling of a conference to be held in connection with the investigations.

SUMMARY: The U.S. International Trade Commission hereby gives notice of the institution of investigations Nos. 701–TA–125 through 129 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. § 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Belgium, Brazil, France, the United Kingdom, and West Germany of hot-rolled carbon steel bar, provided for in items 606.8310, 607.8330, and 606.8350 of the Tariff Schedules of the United States Annotated (1982), upon which bounties or grants are alleged to be paid.

EFFECTIVE DATE: January 11, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Eninger, Office of Investigations, U.S. International Trade Commission; telephone 202–523–0312.

SUPPLEMENTARY INFORMATION:

BACKGROUND

These investigations are being instituted in response to petitions filed January 11, 1982, on behalf of Republic Steel Corp., Inland Steel Corp., Jones & Laughlin Steel, Inc., National Steel Corp., and Cyclops Steel Corp. The Commission must make its determinations in these investigations within 45 days after the date of the filing of the petitions or by February 25, 1982 (19 CFR § 207.17). The investigations will be subject to the provisions of part 207 of the Commission's Rules of Practice and Procedure (19 CFR § 207, 44 F.R. 76457), and particularly subpart B thereof.

Written submissions: Any person may submit to the Commission on or before February 9, 1982, a written statement of information pertinent to the subject matter of the investigations. A signed original and nineteen copies of such statements must be submitted.

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately, and each sheet must be clearly marked at the top "Confidential Business

Data." Confidential submissions must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR § 201.6). All written submissions, except for confidential business data, will be available for public inspection.

Conference: The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m., e.s.t., on February 3, 1982, at the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. Parties wishing to participate in the conference should contact the supervisory investigator for the investigations, Mr. Lynn Featherstone, telephone 202–523–0242, not later than January 27, 1982, to arrange for their appearance. The conference in these investigations will be held concurrently with that for countervailing duty investigations Nos. 701–TA–86 through 124 and 130 through 144 (Preliminary) and antidumping investigations Nos. 731–TA–53 through 86 (Preliminary).

For further information concerning the conduct of the investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR § 207), and part 201, subparts A through E (19 CFR § 201). Further information concerning the conduct of the conference will be provided by Mr. Featherstone.

This notice is published pursuant to section 207.12 of the Commission's Rules of Practice and Procedure (19 CFR § 207.12).

By order of the Commission.

Issued: January 15, 1982.

KENNETH R. MASON,
Secretary.

In the Matter of
CERTAIN SURFACE GRINDING MACHINES AND LITERATURE FOR PROMOTION THEREOF } Investigation No. 337–TA–95

Notice of Termination of Respondents

AGENCY: U.S. International Trade Commission.

ACTION: Termination of investigation as to respondents Jones and Henry Tool Co., Cactus State Machinery, Kabaco Tools, Inc. dba KBC Machinery, Equipment Importers Inc. dba Jet Equipment and Tool and Select Machine Tool and Supply Co.

SUMMARY: The Commission has terminated the above-captioned investigation as to respondents Kabaco Tools, Inc. dba KBC Ma-

chinery, and Equipment Importers Inc. dba Jet Equipment and Tool based on consent order agreements, and as to respondents Jones and Henry Tool Co. and Cactus State Machinery based on settlement agreements, and as to Select Machine Tool & Supply Co. because the continued presence of that respondent is unnecessary for purposes of obtaining an appropriate resolution to the investigation.

Termination of these five respondents terminates this investigation as they are the only respondents remaining.

SUPPLEMENTARY INFORMATION: This investigation is being conducted under section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) and concerns alleged unfair trade practices in the importation into and sale in the United States of certain surface grinding machines and literature for the promotion thereof. The complainant, Brown and Sharpe Mfg. Co., and respondents Kabaco Tools Inc. dba KBC Machinery, and Equipment Importers Inc. dba Jet Equipment and Tool jointly moved to terminate the investigation as to aforementioned respondents on the basis of consent order agreements. The complainant and respondents Jones and Henry Tool Co. and Cactus State Machinery jointly moved to terminate the investigation as to the aforementioned respondents on the basis of written settlement agreements. Select Machine Tool & Supply Co. is being terminated from this investigation because its continued presence as a respondent is unnecessary to an appropriate resolution of the investigation.

Copies of the Commission's Action and Order and all other nonconfidential documents filed in connection with the investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Clarease E. Mitchell, Esq., Office of the General Counsel, telephone 202–523–0148.

By order of the Commission.

Issued: January 15, 1982.

KENNETH R. MASON,
Secretary.

(603–TA–7)

AIRTIGHT CAST-IRON STOVES

Notice of Preliminary Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of preliminary investigation pursuant to 19 U.S.C. 2482.

SUMMARY: Notice is hereby given that on January 4, 1982, the United States International Trade Commission voted to institute a preliminary investigation under section 603 of the Trade Act of 1974 (19 U.S.C. 2482) to investigate the possible existence of unfair methods of competition and unfair acts with respect to the importation into the United States and sale of certain airtight cast-iron stoves and, the effects, if any, of such methods and acts.

AUTHORITY: The authority for institution of this preliminary investigation is contained in section 603 of the Trade Act of 1974 (19 U.S.C. 2482).

SCOPE OF THE INVESTIGATION: The unfair methods of competition and unfair acts to be investigated are as follows:

1. Passing off imported copies of domestic airtight cast-iron stoves and causing the consumer to believe that such imported stoves are the domestic stoves, the effect or tendency of which is to destroy or substantially injure the efficiently and economically operated airtight cast-iron stove industry in the United States.

2. Engaging in false and deceptive advertising for the purpose of furthering the belief on the part of the consumer that the imported stoves are the domestic stoves, the effect or tendency of which is to destroy or substantially injure the efficiently and economically operated airtight cast-iron stove industry in the United States.

3. Infringing the common law trademark protection provided to various airtight cast-iron stove companies because respondents' stoves are virtually identical copies, the effect or tendency of which is to destroy or substantially injure the efficiently and economically operated airtight cast-iron stove industry in the United States.

The Commission staff has been directed to submit its report and recommendations regarding the above matters to the Commission no later than ninety (90) days from the date of publication of this notice in the Federal Register.

By order of the Commission.

Issued: January 13, 1982.

KENNETH R. MASON,
Secretary.

Investigation No. 731-TA-48 (Final)

Certain Amplifier Assemblies and Parts Thereof From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of final antidumping investigation.

SUMMARY: As a result of a preliminary determination by the United States Department of Commerce that there is a reasonable basis to believe or suspect that exports of high power microwave amplifiers and components thereof from Japan are being sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), the United States International Trade Commission hereby gives notice of the institution of investigation No. 731–TA–48 (Final) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded by reason of imports of such merchandise. For purposes of this investigation, high power microwave amplifiers are radio-frequency power amplifier assemblies and components thereof, specifically designed for uplink transmission in the C, X, and Ku bands from fixed earth stations to communication satellites and having a power output of one kilowatt or more. These articles are currently classified under item 685.29 of the Tariff Schedules of the United States. This investigation will be conducted according to the provisions of part 207, subpart C, of the Commission's Rules of Practice and Procedure (19 CFR, Part 207, 44 F.R. 76458).

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Miller, Office of Investigations, U.S. International Trade Commission, Room 337, 701 E Street NW., Washington, DC 20436, telephone 202–523–0305.

SUPPLEMENTARY INFORMATION: On September 16, 1981, the Commission unanimously determined, on the basis of the information developed during the course of investigation No. 731–TA–48 (Preliminary), that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from Japan of certain amplifier assemblies and parts thereof, which are alleged to be sold in the United States at LTFV. As a result of the Commission's affirmative preliminary determination, the Department of Commerce continue its investigation into the question of LTFV sales. Unless the investigation is extended, the final LTFV determination will be made by the Department of Commerce on or before March 9, 1982.

Staff report: A staff report containing preliminary findings of fact will be available to all interested parties on February 22, 1982.

Written submissions: Any person may submit to the Commission on or before March 26, 1982, a written statement of information pertinent to the subject matter of this investigation. A signed original and nineteen copies of such a statement must be filed at the office

of the Secretary, U.S. International Trade Commission Building, 701 E Street NW., Washington, DC 20436.

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR § 201.6). All written submissions, except for confidential business data, will be available for public inspection.

Public hearing: The Commission will hold a public hearing in connection with this investigation on March 16, 1982, in the Hearing Room of the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC 20436, beginning at 10:00 a.m., e.s.t. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m., e.s.t.) March 10, 1982. All persons desiring to appear at the hearing and make oral presentations must file prehearing statements and should attend a prehearing conference to be held at 11:00 a.m., e.s.t., March 1, 1982, in Room 117 at the U.S. International Trade Commission Building. Prehearing statements must be filed on or before March 10, 1982. For further information concerning the conduct of the investigation, hearing procedures, and rules of general applications, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (CFR 207), and parts 201, subparts A through E (19 CFR 201).

This notice is published pursuant to § 207.20 of the Commission's Rules of Practice and Procedure (19 CFR 207.20, 44 F.R. 76458).

By order of the Commission.

Issued: January 13, 1982.

KENNETH R. MASON,
Secretary.

731–TA–38 (Final)

TRUCK TRAILER AXLE-AND-BRAKE ASSEMBLIES AND PARTS THEREOF FROM HUNGARY

Suspension of Investigation

AGENCY: United States International Trade Commission.

ACTION: Suspension of investigation.

EFFECTIVE DATE: January 4, 1982.

SUMMARY: On January 4, 1982, the U.S. Department of Commerce published a notice in the *Federal Register* (47 F.R. 66) suspending its antidumping investigation involving truck trailer axle-and-brake assemblies and parts thereof from Hungary, provided for in items 692.32 and 692.60 of the Tariff Schedules of the United States. The basis for the suspension by Commerce is an agreement by the Hungarian Railway Carriage and Machine Works (RABA), a manufacturer and exporter which accounts for all of the known imports of this product from Hungary, to revise its prices to eliminate sales of this merchandise to the United States at less than fair value.

Accordingly, the Commisson hereby gives notice of the suspension of its investigation No. 731–TA–38 (Final) to determine whether an industry in the United States is materially injured or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise.

If, within 20 days of the effective date of this notice, the U.S. Department of Commerce receives a request from an interested party to continue this investigation in accordance with section 734(g) of the Tariff Act of 1930, as amended (19 U.S.C. 1673c), Commerce and the Commission will do so, notwithstanding the suspension agreement. A final determination will not be made in this investigation unless there is such a request for continuation of the investigation.

FOR FURTHER INFORMATION CONTACT: Ms. Abigail Eltzroth, U.S. International Trade Commission, Room 337, 701 E Street, NW., Washington, D.C. 20436; telephone (202)523–0289.

This notice is published pursuant to section 207.20 of the Commission's Rules of Practice and Procedure (19 CFR 207.20).

By order of the Commission.

Issued: January 13, 1982.

KENNETH R. MASON,
Secretary.

Termination of Countervailing Duty Investigation Concerning Refrigerators, Freezers, Other Refrigerating Equipment, and Parts From Italy

AGENCY: U.S. International Trade Commission.

ACTION: Termination of countervailing duty investigation under section 104(b)(1) of the Trade Agreements Act of 1979, with regard to refrigerators, freezers, other refrigerating equipment, and parts from Italy.

EFFECTIVE DATE: January 6, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Reavis, Office of Investigations, telephone number (202) 523–0296.

SUPPLEMENTARY INFORMATION: The Trade Agreements Act of 1979, section 104(b)(1), requires the Commission in the case of a countervailing duty order issued under section 303 of the Tariff Act of 1930, upon the request of a government or group of exporters of merchandise covered by the order, to conduct an investigation to determine whether an industry in the United States would be materially injured, or threatened with material injury, or whether the establishment of such an industry would be materially retarded, if the order were to be revoked. On March 28, 1980, the Commission received a request from the Delegation of the Commission of the European Communities for the review of the outstanding countervailing duty order on refrigerators, freezers, other refrigerating equipment, and parts from Italy (T.D. 75–85).

On October 26, 1981, the Commission received a letter from counsel for White Consolidated Industries, Inc., the original petitioner for the countervailing duty order, stating that it was withdrawing its request for the imposition of countervailing duties under the above referenced countervailing duty order.

While there is no provision in the Trade Agreements Act of 1979, or in its legislative history, permitting termination of a transition case investigation, termination of a properly instituted countervailing duty investigation is permitted under section 704(a) of the Tariff Act of 1930. Termination authority is explicit in cases based on newly filed countervailing duty petitions; it is implied with respect to existing countervailing duty orders. Before terminating a section 104 investigation the Commission solicits public comment, then approves the termination only if it is in the public interest.

On November 25, 1981, (45 F.R. 57786) the Commission published a notice in the Federal Register requesting public comment by December 28, 1981, on the proposed termination of the Commission investigation on refrigerators, freezers, other refrigerating equipment, and parts from Italy. No adverse comments were received in response to the Commission's notice.

The Commission is therefore terminating its investigation under section 104(b)(1) of the Trade Agreements Act of 1979 on refrigerators, freezers, other refrigerating equipment, and parts from Italy (T.D. 75–85). The termination of this investigation has the same effect as a determination that an industry in the United States would not be materially injured, or threatened with material injury, nor would the establishment of such an industry be materially retarded, if the countervailing duty order were to be revoked.

In addition to publishing this Federal Register notice, the Commission is serving a copy of this notice on all persons who have written the agency in connection with this investigation and is also notifying the Department of Commerce of its acroon in this case.

By order of the Commission.

Issued: January 7, 1982.

KENNETH R. MASON,
Secretary.

Index

U.S. Customs Service

U.S. GOVERNMENT PRINTING OFFICE : 1982 O - 365-073

CB SERIA300SDISSDUE038R 1
SERIALS PROCESSING DEPT
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106